I do allow the Printing of this Book,

Francis North,

Jan. 5. 167$\frac{5}{6}$.

I do allow the Printing of this Book,

Francis North,

Jan. 5. 167$\frac{5}{6}$.

YALE LAW LIBRARY

THE LAW OF Charitable Uſes,

Reviſed and much Enlarged;
With many

CASES in LAW BOTH *ANCIENT* and *MODERN*:

Whereunto is now added, the Learned READING OF

Sr Francis Moor, Kt.

Sergeant at Law. 4 *Jacobi*, in the *Middle Temple Hall*,

Upon the Statute of 43 *Eliz.* concerning *Charitable Uſes*, (who was a Member of that PARLIAMENT when that Statute was made, and the Penner thereof.) Abridged by himſelf, and now Printed by his own Original Manuſcript.

TOGETHER,

With the manner of Proceedings in *Chancery*, by Information, in the name of the King's Attorney-General, for Relief, on divers Caſes, wherein the Aid of this Statute is not required.

Neceſſary for all Biſhops, Cathedrals, Colledges, and all Pariſhes in *England*, for Recovery and Setling of CHARITABLE Donations.

Methodically Digeſted,
By GEORGE DUKE of the *Inner Temple*, Eſq;

London, Printed for *Henry Twyford*, and are to be ſold at his Shop in *Vine-Court*, *Middle Temple* 1676.

JUL 12 1933

To His most Sacred MAJESTY,

Charles the II.

By the Grace of God, King of *Great Britain*, *France*, and *Ireland*, Defender of the Faith, *&c.*

May it please Your MAJESTY,

THE *BOOK now laid before Your Majesties Feet, is of such general benefit to Your Majesties Subjects, that it durst not be offer'd to any other Patronage. Your Royal Zeal for rebuilding the Renowned Church of* St. PAUL; *and the now most August, and famous City of* LONDON, *with Your known Publick Spirit for all Works of Piety and Magnificence, makes this* Collection *for* Pious Uses, *not so much to* Come, *as to* Rebound *back to Your MAJESTY.*

And since this whole Design is to Promote and Preserve Publick Benefactions, *there is hope Your Majesty will Graciously pardon the humble Endeavours of*

Your Majesties most Devoted,

and

Most Obedient Subject,

GEORGE DUKE.

TO THE

READER.

IF thou either love *Piety* or *Publick Good*, I have here brought thee a Book for thy purpose. 'Tis a Collection of the Work of many Hands, and those of the wisest, and best able to Judge. The late distractions have tempted so many to imbezel what was given to *Pious Uses*, that if this Book seem'd *Requisite* before, 'tis absolutely *Necessary* now. And 'tis so fitted, that whoever will apply it, need fear neither *Craft* nor *Power* of any Sacrilegious Hand. The way to reach them is here made plain and certain; where thou mayst have advice both from *Barr* and *Bench*, without a Fee. The Statute it self (of 43 *Eliz.* Cap. 4.) is first prefixt; then the exact Sense and Meaning of each Clause (I might say, of every word) for Relief of the *Poor*, whether *Aged* or *Impotent*, Maintainance for *Sick*, or *Maimed Soldiers*; for *Free-Schools*, *Universities*, *Houses of Correction*; *Bridges*, *Ports*, *Havens*, *Causeways*, *Churches*, *Sea-Banks*, and *Highways*; *Education* and *Preferment of Orphans*, *Marriage of poor Maids*, *Help of young Tradesmen*, *Handicrafts men*, Persons *decayed*, *Redemption of Captives*; in brief, the whole *Law of Charitable Uses*, more full and plain, than ever yet was published. And I must not conceal, that the most Worthy and Learned Sir *Francis Moor*, Sergeant at LAW, being a Member of that Parliament

liament of 43 *Elizabeth*, was particularly then *Order'd*, by the *House*, to draw up that Law for *Charitable Uses*; which was no small reason, why the said Learned Gentleman, afterwards spent so much of his precious Studies in *Reading* upon that Statute, in the *Middle-Temple-Hall*; an exact Copy whereof, you have here also publish'd, by the very Original, under his own Hand: So as now, all Commissioners and others, are fully taught their Lesson, how to rescue any *Lands*, *Rents*, *Annuities*, *Profits*, *Goods*, *Chattels*, or *Money*, given to *Publick*, or *Charitable Uses*; the true and surest Method for suing out *Commissions*, with the best ways of proceeding thereupon, both in *Law* and *Equity*; what Cases have been adjudged, and how, whether in Courts of *Justice*, *Chancery*, or the High Court of *Parliament*. And pardon me, if I say, by this my poor endeavour, I have more satisfaction (be the Profit more or less) than by any Book ever pass'd through my Hands; since I safely can affirm, that as this Work is on the best Subject, and for the best End, so here is more for *Charitable Uses*, than ever yet came together in Print, or could have been hoped for,

By

In Vine-Court in the Middle-Temple.

Thy Faithful Servant,

H. T.

CHAP. I.

THE STATUTE OF CHARITABLE USES.

43 *Eliz.* CHAP. IV.

An Act to redreſs the miſ-imployment of Lands, Goods, and Stocks of Money, heretofore given to charitable Uſes.

WHereas Lands, Tenements, Rents, Annuities, Profits, Hereditaments, Goods, Chattels, Money, and Stocks of Money, have been heretofore given, limited, appointed, and aſsigned, as well by the Queens moſt Excellent Majeſty, and her moſt Noble Progenitors, as by ſundry other well-diſpoſed perſons; ſome for relief of Aged, Impotent and Poor People; ſome for maintainance of Sick and maimed Soldiers and Mariners, Schools of Learning, Free Schools, and Scholars of Univerſities; ſome for repair of Bridges, Ports, Havens, Cauſways, Churches, Sea-banks, and High-ways; Some for education and preferment of Orphanes; Some for, or towards the Relief, Stock, or Maintainance for Houſes of Correction; Some for Marriages of poor Maids; Some for Supportation, Aid, and Help of young Tradeſmen, Handycrafts-men, and Perſons decayed, and others for relief, or redemption of Priſoners or Captives, and for aid or eaſe of any poor Inhabitants concerning payment of Fifteens, ſetting out of Soldiers, and other Taxes; which Lands, Tenements, Rents, Annuities, Profits, Hereditaments, Goods, Chattels, Money, and Stocks of Money; nevertheleſs, have not been imployed, according to the charitable intent of the Givers and Founders thereof, by reaſon of Frauds,

breaches of truſt, and negligence in thoſe that ſhould pay, deliver, and imploy the ſame. For redreſs and remedy whereof; Be it enacted, by Authority of this preſent Parliament, That it ſhall and may be lawful, to, and for the Lord Chancellor, or Keeper of the Great Seal of England for the time being; and for the Chancellor of the Dutchy of Lancaſter for the time being, for Lands within the County Palatine of Lancaſter, from time to time, to award Commiſsions under the Great Seal of England, or the Seal of the County Palatine, as the caſe ſhall require, into all, or any part or parts of this Realm reſpectively, according to their ſeveral juriſdictions, as aforeſaid, to the Biſhops of every ſeveral Dioceſs, and his Chancellor, in caſe there ſhall be any Biſhop of that Dioceſs, at the time of awarding of the ſame Commiſsions, and to other perſons of good and ſound behaviour, authorizing them thereby, or any four or more of them, to enquire, as well by the Oaths of twelve men, or more of the County, as by all other good and lawful ways and means, of all and ſingular ſuch Gifts, Limitations, Aſsignments and Appointments aforeſaid, and of all the abuſes, breaches of truſt, negligences, miſ-imployments, not imploying, concealing, defrauding, miſ-converting or miſ-governing of any Lands, Tenements, Rents, Annuities, Profits, Hereditaments, Goods, Chattels, Money, or Stocks of Money heretofore given, limited, appointed or aſsigned, or which hereafter ſhall be given, limited, appointed, or aſsigned, to, or for any the charitable and godly uſes before rehearſed, and after the ſaid Commiſsioners, or any four, or more of them (upon calling the parties intereſted in any ſuch Lands, Tenements, Rents, Annuities, Profits, Hereditaments, Goods, Chattels, Money, and Stocks of Money) ſhall make enquiry by the Oaths of twelve men or more of the ſaid County (whereunto the perſons intereſted ſhall and may have, and take their lawful challenge and challenges) and upon ſuch enquiry, hearing and examining thereof, ſet down ſuch Orders, Judgements and Decrees, as the ſaid Lands, Tenements, Rents, Annuities, Profits, Goods, Chattels, Money, or Stocks of Money, may be duly and faithfully imployed, to, and for ſuch of the charitable uſes and intents before rehearſed reſpectively for which they were given, limited, aſsigned or appointed by the Donors and Founders thereof; which Orders, Judgements and Decrees, not being contrary, or repugnant to the Orders, Statutes, or Decrees, of the Donors or Founders, ſhall, by the authority of this preſent Parliament, ſtand firm and good, according to the Tenor and Purport thereof, and ſhall be executed accordingly, until the ſame ſhall be undone and altered by the Lord Chancellor of England, or Lord Keeper of the Great Seal of England, or the Chancellor of the County Palatine of Lancaſter, reſpectively within their ſeveral Juriſdictions, upon complaint by any party grieved to be made to them.

Provided always, that neither this Act, nor any thing therein contained, ſhall, in any wiſe, extend to any Lands, Tenements, Rents, Annuities, Profits, Goods, Chattels, Money, or Stocks of Money, given, limited, aſsigned, or appointed, or which ſhall be given, limited, appointed, or aſsigned to any Colledge, Hall, or Houſe of Learning within the Univerſities of Oxford, or Cambridge, or to the Colledges of Weſtminſter, Eaton, or Winchester, or any of them, or to any Cathedral or Collegiate-Church within this Realm.

And

And Provided also, That neither this Act, nor anything therein, shall extend to any City or Town corporate, or to any the Lands or Tenements given to the uses aforesaid, within any such City or Town corporate, where there is a special Governor or Governors appointed to govern or direct such Lands, Tenements, or things disposed to any the uses aforesaid, neither to any Colledge, Hospital, or Free-School, which have special Visitors, or Governors, or Overseers appointed them by their Founders.

Provided also, and be it Enacted, by the Authority aforesaid, that neither this Act, nor any thing therein contained, shall be any way prejudicial or hurtful to the jurisdiction of the Ordinary, or power of the Ordinary, but that he may lawfully, in every cause, execute and perform the same, as though this Act had never been had or made.

Provided also, and be it Enacted, That no person or persons, that hath, or shall have any of the said Lands, Tenements, Rents, Annuities, Profits, Hereditaments, Goods, Chattels, Money, or Stocks of Money in his hands or possession, or doth, or shall pretend Title thereunto, shall be named a Commissioner or a Juror for any the Causes aforesaid, or being named, shall execute or serve in the same.

And Provided also, That no person or persons which hath purchased or obtained, or shall purchase or obtain, upon valuable consideration of Money or Land, any Estate in, or Interest, of, in, to, or out of any Lands, Tenements, Rents, Annuities, Hereditaments, Goods or Chattels, that have been, or shall be given, limited or appointed to any of the charitable Uses above-mentioned, without fraud or covin (having no notice of the same charitable Uses) shall not be impeached by any Decrees or Orders of Commissioners above-mentioned, for, or concerning the same his Estate or Interest; And yet nevertheless, be it Enacted, That the said Commissioners, or any four or more of them, shall and may make Decrees and Orders for recompence to be made by any person or persons, who being put in Trust, or having notice of the charitable Uses abovementioned, hath, or shall break the same Trust, or defraud the same Uses by any Conveyance, Gift, Grant, Lease, Demise, Release, or Conversion whatsoever, and against the Heirs, Executors and Administrators of him, them, or any of them, having Assets in Law or Equity, so far as the same Assets will extend.

Provided always, that this Act shall not extend to give power or authority to any Commissioners before-mentioned, to make any Orders, Judgements or Decrees, for, or concerning any Mannors, Lands, Tenements or other Hereditaments assured, conveyed, granted, or come unto the Queens Majesty, to the late King Hen. the 8. King Edw. the 6. or Queen Mary, by Act of Parliament, surrender, exchange, relinquishment, escheat, attainder, conveyance, or otherwise; And yet, nevertheless, Be it Enacted, That if any such Mannors, Lands, Tenements, or Hereditaments, or any of them, or any Estate, Rent, or Profit thereof, or out of the same, or any part thereof, have, or hath been given, granted, limited, appointed or assigned, to, or for any the charitable Uses before expressed at any time since her Majesties Reign; that then the said Commissioners, or any four or more of them, shall and may, as concerning the same Lands, Tenements, Hereditaments, Estate, Rent or Profit, so given,

limited, appointed, or aſsigned, proceed to enquire quire, and to make Orders, Judgements, and Decrees, according to the purport and meaning of this Act, as before is mentioned, in the laſt ſaid mentioned Proviſo, notwithſtanding.

And be it further Enacted, that all Orders, Judgements, and Decrees of the ſaid Commiſsioners, or of any four or more of them, ſhall be certified under the Seals of the ſaid Commiſsioners, or any four or more of them, either into the Court of the Chancery of England, or into the Court of the Chancery within the County Palatine of Lancaſter, as the Caſe ſhall require reſpectively, according to their ſeveral juriſdictions, within ſuch convenient time as ſhall be limited in the ſaid Commiſsion.

And that the ſaid Lord Chancellor, or Lord Keeper, and the ſaid Chancellor of the Dutchy, ſhall and may, within their ſaid ſeveral juriſdictions, take ſuch order for the due execution of all, or any of the ſaid Judgments, Orders, Decrees, as to either of them ſhall ſeem fit and convenient.

And that if after any ſuch Certificate or Certificates made, any perſon or perſons ſhall find themſelves grieved with any of the ſaid Orders, Judgements, or Decrees, that then it ſhall and may be lawful to, and for them, or any of them, to complain in that behalf unto the ſaid Lord Chancellor, or Lord Keeper, or to the Chancellor of the ſaid Dutchy of Lancaſter, according to their ſeveral Juriſdictions for redreſs therein; and that upon ſuch complaint, the ſaid Lord Chancellor, or Lord Keeper, or the ſaid Chancellor of the Dutchy may, according to their ſaid ſeveral juriſdictions, by ſuch courſe as to their wiſdom ſhall ſeem meeteſt, the circumſtances of the Caſe conſidered, proceed to the examination, hearing, and determining thereof; and upon hearing thereof, ſhall and may annull, diminiſh, alter, or enlarge the ſaid Orders, Judgements, and Decrees of the ſaid Commiſsioners, or any four or more of them, as to either of them in their ſaid ſeveral juriſdictions, ſhall be thought to ſtand with equity and good conſcience, according to the true intent and meaning of the Donors and Founders thereof, and ſhall and may Tax and Award good coſts of Suit by their Diſcretions, againſt ſuch perſons as they ſhall find to complain unto them, without juſt and ſufficient cauſe, of the Orders, Judgements, and Decrees before-mentioned.

The Heads of the Statute of Charitable Uſes.

BY this Statute, Authority is given to the Lord Chancellor, or Lord Keeper, and to the Chancellor of the Dutchy reſpectively, to Grant Commiſſions under their ſeveral Seals.

Concerning theſe Commiſſions, theſe ſix things are to be obſerved:

1. *The number; the Commiſſioners muſt be four, or more.*

2. *The Commiſſioners muſt be the Biſhop and Chancellor of the Dioceſs, if there be a Biſhop, and other perſons of good and ſound behaviour.*

3. *In that Commiſſion, any four of them do ſuffice to make Orders and Decrees, for therein none is of the Quorum.*

4. *None ſhall be Commiſſioners that have any part of the Land, &c. or Goods or Chattels, Money, or Stocks in queſtion.*

5. *The*

5. *The Commiſſion is to limit a certain time, within which, the Commiſſioners are to order, decree, and certify.*
6. *Their Authority is to enquire, as well by the Oath of twelve Men or more, as by all other good ways and means.*

Concerning the Jurors, or Inqueſt of Inquiry, theſe two things are to be obſerved.

1. *The Parties intereſſed may have their lawful challenge and challenges.*
2. *None that pretend Title to any of the Lands, &c. Goods, Chattels, Money, or Stocks in queſtion, ſhall be a Juror, &c.*

They are to enquire of all and ſingular gifts, limitations, and appointments of any Lands, Tenements, Rents, Annuities, Profits, Hereditaments, Goods, Chattels, Money, Stocks of Money, for 21 Charitable Uſes, in Relieving, Maintaining, Repairing, Educating, Preferring, Marrying, Supporting, Aiding, Helping, Redreſſing, and Eaſing.

1. *For relief of Aged, and Impotent, and poor People.*
2. *For maintainance of ſick and maimed Soldiers.*
3. *Schools of Learning.*
4. *Free-Schools.*
5. *Scholars in Univerſities.*
6. *Houſes of Correction.*
7. *For repair of Bridges.*
8. *Of Ports and Havens.*
9. *Of Cauſways.*
10. *Of Churches.*
11. *Of Sea-banks.*
12. *And of High-ways.*
13. *For education and preferment of Orphans.*
14. *For Marriage of poor Maids.*
15. *For ſupportation and help of young Tradeſmen.*
16. *Of Handicrafts-men.*
17. *Of perſons decayed.*
18. *For redemption, or relief of Priſoners or Captives.*
19. *For eaſe and aid of poor Inhabitants, concerning payment of* Fifteens.
20. *Setting out of Soldiers.*
21. *And other Taxes.*

And the Commiſſioners have power to enquire of theſe nine things.

1. *Of Abuſes.*
2. *Of breaches of Truſt.*
3. *Of Negligences.*
4. *Of miſ-imployment.*
5. *Of not Imploying.*
6. *Of Concealing.*
7. *Of Defrauding.*
8. *Of Mis-converting.*
9. *Of Mis-government*

Of any Lands, Tenements, Rents, Annuities, Profits, Hereditaments, Goods, Chattels, Money, Stocks of Money given to any of the Charitable Uſes aforeſaid.

But

But this Act doth not extend to all Lands, &c. not to all Goods and Chattels, Money, or Stocks of Money, given to any charitable Uſe aforeſaid, but certain are exempted in theſe eight ſeveral Caſes, *viz.*

1. *Of the Colledges and Halls in either of the Univerſities of* Cambridge *and* Oxford.
2. *Of the Colledge of* Weſtminſter.
3. *Of the Colledge of* Eaton.
4. *Of the Colledge of* Wincheſter.
5. *Of any City or Town Corporate, where there is a ſpecial Governor or Governors of ſuch Lands.*
6. *Of any Colledge, Hoſpital, or Free-School which have ſpecial Viſitors, or Governors, or Overſeers appointed to them by the Founders.*
7. *Of Purchaſers having theſe three qualities;*
   1. *For valuable conſideration of Money or Land.*
   2. *Without Fraud or Covin.*
   3. *Having no notice of the ſame Charitable Uſe.*

But albeit the Commiſſioners cannot make a Decree againſt any ſuch Purchaſors, yet may they make Decrees for recompence to be made by any perſon or perſons, who being put in truſt, or having notice of the Charitable Uſes aboveſaid, have, or ſhall break the ſaid Truſt, or defraud the ſame Uſes by any Conveyance, Gift, Grant, Leaſe, Releaſe, or Converſion, and againſt his or their Heirs, Executors, Adminiſtrators, having Aſſetts in Law or Equity, ſo far as the ſame Aſſetts will extend.

8. *Of Purchaſers of Lands, Tenements, and Hereditaments aſſured, conveyed, or come to* Queen Elizabeth, *Quen* Mary, Hen. 8. *or* Edw. 6. *by Act of Parliament, ſurrender, exchange, relinquiſhment, eſcheat, attornment, conveyance or otherwiſe; but if any ſuch Mannors, Lands, &c. have, ſince the beginning of* Queen Elizabeth's *Reign, been given, &c. to any of the Charitable Uſes above expreſſed, then this Act doth extend to the ſame.*

Concerning the Certificate of the Commiſſioners, theſe four things are to be obſerved:

1. *That they certify their Order and Decree reſpectively, either into the Court of Chancery of* England, *or into the Chancery of the County Palatine of* Lancaſter, *as the caſe ſhall require.*
2. *That it ought to be in Parchment, under the Hands and Seals of the Commiſſioners.*
3. *It muſt be within the time limited in the Commiſſion.*
4. *That the Lord Chancellor, or Lord Keeper, and the ſaid Chancellor of the Dutchy, ſhall and may, within their ſeveral juriſdictions, take ſuch order for the due execution of all or any of the ſaid Judgments, Decrees, and Orders ſo certified, as to either of them ſhall ſeem fit and convenient.*

In the remedy for the parties grieved with ſuch Decrees ſo certified, theſe five things are to be conſidered:

1. *That*

1. *That he complain to the Lord Chancellor, or Lord Keeper, or to the Chancellor of the Dutchy, according to their ſeveral juriſdictions for redreſs thereof. And this complaint is to be by Bill.*

2. *Upon ſuch complaint, firſt, they ſhall reſpectively, by ſuch courſe, as to their wiſdoms ſhall ſeem meeteſt, the circumſtances of the caſe conſidered, proceed to the hearing, examination and determining thereof; and upon hearing thereof, ſhall or may adnull the whole, diminiſh part, or enlarge (that is, confirm the former, and enlarge the ſame, by adding ſomething thereunto) the Judgements and Decrees ſo certified.*

3. *As ſhall be thought to ſtand with equity and good Conſcience.*

4. *According to the true intent and meaning of the Donors and Founders thereof; and this is* Lapis ductitius, *whereby the Commiſſioners and Chancellors muſt ſteer their courſe.*

5. *And ſhall and may tax and award good coſts of Suit by their diſcretion reſpectively, againſt ſuch perſons as ſhall complain to them reſpectively, without juſt and ſufficient cauſe of the Orders, Judgements and Decrees before-mentioned: But this Order being given and limited by an Act of Parliament, no coſts (if the Order, Judgement. or Decree be adnulled, diminiſhed, or enlarged) ought to be given to the party complaining.*

COMMISSION.

CHAP. II.

CHarles the II. by the Grace, &c. To the Reverend Father in God, the Lord Biſhop of L. for the time being, and to our Right Truſty and Welbeloved H. Lord H. of R. And alſo to Our Truſty and Welbeloved Sir T. W. Baronet, Sir G. P. Knight, Chancellor to the ſaid B. for the time being, T. M. of M. W. M. of T. W. J. of T. T. H. E. J. C. H. of B. H. M. P. C. R. O. Eſquires, Greeting: Know ye, That We, for the due execution of a certain Statute made in the high Court of Parliament, holden the ſeven and twentieth day of October, in the three and fortieth year of the Reign of the late Queen Elizabeth, Entituled, An Act to Redreſs the miſ-imployment of Lands, Goods, and Stocks of Money heretofore given to Charitable Uſes; And having ſpecial Truſt and Confidence in your approved Fidelities, Wiſdoms, and Diſcretions, have authorized and appointed you to be Our Commiſsioners, and by theſe Preſents do give unto you, and to any four or more of you, full power and authority to inquire, as well by the Oaths of twelve lawful men or more of our County of M. as well within Liberties as without, as by all other good and lawful ways and means, according to the purport and true meaning of the ſaid Statute, what Lands, Tenements, Rents, Annuities, Profits, Hereditaments, Goods, Chattels, Money, or Stocks of Money, have at any time or times heretofore been given, limited, appointed, or aſsigned by Us, or any of Our Progenitors, or Predeceſſors, or by any other well-diſpoſed perſon or perſons, Bodies Politick or Corporate, for the relief of aged, impotent, and poor People, maintainance of ſick and maimed Soldiers or Mariners, Schools of Learning,

Free-

Free-Schools, or Schools in Universities, repair of Bridges, Ports, Havens, Causeways, Churches, Sea-banks, or Highways, education or preferment of Orphans, Relief, Stock, or Maintainance for Houses of Correction, Marriages of poor Maids, Supportation, Aid, or Help of young Tradesmen, Handicrafts-men, or persons decayed, Relief or Redemption of Prisoners or Captives, or Aid or Ease of any poor Inhabitants concerning payment of Fifteens, setting out of Soldiers, or other Taxes in any Parish, Town, or Place within the said County of M. and of all and singular the abuses, misdemeanors, breaches of Trust, Negligences, Mis-imployments, not imploying, concealing, defrauding, mis-converting, or mis-government of the same Lands, Tenements, Rents, Annuities, Profits, Hereditaments, Goods, Chattels, Money, or Stocks of Money; or any of them heretofore given, limited, appointed, or assigned, to, or for any the charitable and godly Uses before rehearsed, according to the purport and true meaning of the said Statute. And upon such Inquiry, Hearing, and Examining thereof, To set down such Orders, Judgements, and Decrees, as the said, Lands, Tenements, Rents, Annuities, Profits, Hereditaments, Goods, Chattels, Money, or Stocks of Money, may be duly and faithfully imployed, to, and for such of the Charitable Uses and Intents before rehearsed respectively, for which they were given, limited, assigned or appointed, by the Donors and Founders thereof, according to the purport and true meaning of the said Statute. And therefore We Command you, that at certain days and places, which you, or any four or more of you, shall appoint in this behalf, ye, or any four, or more of you, do make diligent Inquiry and Inquiries upon the Premisses, and all and singular the same, and all other things appointed by the said Statute for you, or any four, or more of you, to do and execute, that ye, or four of you, at the least, perform, do, and execute, with effect, in all points, and in every respect, according to the said Statute, and according to the true intent and meaning thereof. And the same Inquisition and Inquisitions, and every of them, together with all Decrees, Judgements, Orders, and Proceedings, which you, or any four, or more of you shall, according to the said Statute, thereupon make or set down, that you, or four, or more of you have before Us in Our Chancery with all convenient speed, or at the furthest, in Crastino die Trinitatis next coming, under the Hands and Seals of you, or any four or more of you, and the Hands and Seals of them, by whom the said Inquisition and Inquisitions shall be made, together with this Our Commisson. And We also Command by Authority hereof, Our Sheriff of Our said County of M. that at such times, days, places, as you, or any four or more of you shall appoint to him, he shall cause to come before you, or any four or more of you, such, and as many honest and lawful men of the said County, (as well within Liberties as without) by whom the truth in the Premisses may best be known, to enquire of the Premisses upon their Oaths, as you, or any four or more of you shall require and command him. Willing also, and charging and commanding all and singular Our Justices of Peace, Mayors, Sheriffs, Bayliffs, Constables, Head-burroughs, and all other Our Officers, Ministers, and Subjects to whom in this Case it shall or may appertain, to be aiding, helping, and assisting unto you, Our said Commissioners,

or

or to any four or more of you, in the due execution of this Our Commission. As they and every of them tender Our Pleasure, and will answer the contrary at their uttermost perils: In witness whereof, We have caused these Our Letters of Commission to be Sealed with Our Great Seal. Witness Our Self.

DIRECTIONS.

When a Commission is first sued out, it is good to give notice to the Churchwardens *and* Overseers *for the Poor of Parishes, near where the Commissioners sit, after this manner:*

May 22. 1610.

By the Commissioners for Charitable Uses, *sitting at* B. *in the County of* C.

Camb. WHereas a Commission under the Great Seal of *England*, bearing date at *Westminster* the 10*th.* day of *January*, 1610. Hath been directed to divers persons, dwelling and inhabiting within the County aforesaid, authorizing them, or any four or more of them, to enquire by such ways and means, as in the said Commission is mentioned, what Lands, Tenements, Rents, Annuities, Profits, Hereditaments, Goods, Chattels, Money, and Stocks of Money, have been heretofore given by any well disposed person or persons, for relief of aged, impotent, and poor people, maintainance of sick and maimed Soldiers and Mariners, Schools of Learning, Free-Schools, and Scholars of Universities, repair of Bridges, Ports, Havens, Causeways, Churches, Sea-banks, and Highways, for education and preferment of Orphans; for, or towards the Relief, Stock, or Maintainance for Houses of Correction, Marriage of poor Maids, Supportation, Aid, and help of young Tradesmen, Handicraftsmen, and persons decayed, Release, and Redemption of Captives, Aid and ease of poor Inhabitants, concerning payment of Fifteens, setting out of Soldiers, and other Taxes, and of the Abuses, breaches of Trust, Negligences, Mis-employment, not imploying, concealing, defrauding, misconverting, and mis-government of the same Lands, Tenements, Stocks of Money, and other things given to any of the Charitable Uses aforesaid; and to set down such Orders, Judgements, and Decrees, as that the same Lands, Tenements, Money, and other things, may be duly imployed, to and for such of the Charitable Uses aforesaid, for which they were given, limited, or appointed, by the Donors and Founders thereof. It is this day ordered by the said Commissioners, that notice be given to all Parishes and places within the said County of *C.* of the Commission aforesaid, and the power thereby given to the said Commissioners, that so all persons that have occasion, may take the benefit of the said Commission, and have remedy and redress thereby; and withal, that Directions be given, that such persons as do come to the said Commissioners, for relief in the premises, do bring with them the *Wills*, *Evidences*, *Charters*, and *Writings*, whereby the *Charitable Uses* do appear to be given, created, limited,

aſſigned, and appointed, and ſufficient Witneſs to prove the Breaches of Truſt, not imploying, or miſ-imploying of ſuch things as ſhall be ſo abuſed, not imployed, or miſ-imployed, as aforeſaid.

By T. W. *Clerk, attending the ſaid Commiſſioners.*

Proceedings upon the Statute of Charitable Uſes.

CHAP. III.

A Warrant to call the Parties intereſſed in the Goods or Lands miſ-imployed, to appear before the Commiſſioners.

Eſſex. ſſ. WHereas by a Commiſſion under the Great Seal of *England*, bearing date at *Weſtminſter* the 21 day of *July*, 1659. We whoſe Names are here under-written, for the due execution of a certain Statute, made in the 43 year, of the Reign of the late Queen *Elizabeth*, Entituled, *An Act to redreſs the miſ-imployment of Lands, Goods, and Stocks of Money, heretofore given to* Charitable Uſes, are (among others) authorized and impowred to make ſuch Inquiry, Orders, Judgements, and Decrees, touching ſuch priviledges as in the ſaid Statute and Commiſſion are mentioned. And whereas complaint hath been made unto us by divers of the Inhabitants of *C.* in the County of *E.* That the Rents, Iſſues, and Profits of certain Meſſuages and Lands in great *Cheſterford*, in the ſaid County, heretofore given and appointed by one *T. H.* deceaſed, for the aid of the Inhabitants of *C.* aforeſaid, touching the payment of Fifteens, relief of the Poor, and maintainance of the High-ways, and other Charitable Uſes there, have been miſ-governed, miſ-imployed, and miſconverted by you, of which they deſire that enquiry and redreſs may be made: Now, according to the Directions of the ſaid Statute and Commiſſion, we do hereby give you notice of the ſaid complaint, , and alſo that we do intend to meet for the execution of the ſaid Statute and Commiſſion, and to make enquiry of, and touching the matters complained of as aforeſaid, on the 20 day of *July*, at the houſe of *T. W.* in *G.* in the ſaid County of *E.* at which time and place, we do deſire you to be preſent to make your defence therein, if you ſhall think it expedient. So fare you well,

Your loving Friends.

A. B.
C. D.
E. F.
G. G.

To the Sheriff of the County of E.

Eſſex. BY vertue of a Commiſſion under the Great Seal of *England*, bearing date at *Weſtminſter* the *6th* day of *May* inſtant, to us (whoſe Names are here under written) and others directed, for the due execution of a Statute, made the 43 year of the Reign of the late Queen *Elizabeth*, Entituled, *An Act to redreſs the miſ-imploment of Lands, Goods, and Stocks of Money*, heretofore given to Charitable Uſes: We do Will and Require you, That you cauſe to come before us, and others the ſaid Commiſſioners, or any four of us, at the houſe of *A. B.* called or known by the Name or Sign of the *Crown* in *B.* in the County aforeſaid, on the *10th* day of *June* now next enſuing, by 9 of the clock in the morning of the ſame day, 24 honeſt and lawful Men of your ſaid County, to enquire upon their oaths, according to the tenor of the ſaid Commiſſion, what Lands, Tenements, Rents, Annuities, Profits, Hereditaments, Goods Chattels, Moneys, and Stocks of Money, have at any time heretofore been given, limited, appointed or aſſigned, for any the Charitable Uſes, in the ſaid Statute and Commiſſion mentioned, and that have been miſ-imployed, miſ-converted, or miſ-governed; and of other the matters and things in the ſaid Commiſſion mentioned in that behalf, and hereof you are not to fail; and have you there the Names of the ſaid perſons, *&c. Given under Our Hands and Seals, the 22 day of* May, *in the year of Our Lord*, 1658.

When four or more of the Commiſſioners are met, then read the Commiſſion.
Then call the Sheriff to return his Precept.
Then call the Jury.
When the Jury are full, then call the Parties, Defendants, that they may take their challenges to the Jury.
Then ſwear the Fore-man, as followeth:

The Oath to the Fore-man of the Jury.

YOu ſhall diligently enquire what Lands, Tenements, Rents, Annuities, Profits, Hereditaments, Goods, Chattels, Money, and Stocks of Money, have been heretofore given, limited, appointed or aſſigned, as well by any King or Queen of England, *as any other well-diſpoſed perſon or perſons, for relief of aged impotent, and poor People, maintainance of ſick and maimed Soldiers, Mariners, Schools of Learning, Free-Schools, and Scholars of Univerſities; Houſes of Correction, repair of Bridges, Ports, Havens, Cauſeys, Churches, Sea-banks, and High-ways, Education, and Preferment of Orphans, Relief, Stock, or Maintainance for Houſes of Correction, Marriage of poor Maids, ſupportation and help of young Tradeſmen, Handicrafts-men, and perſons decayed, redemption, or relief of Priſoners and Captives, eaſe and aid of poor Inhabitants, concerning payment of Fifteens, ſetting out of Soldiers, and other Taxes; and of the abuſes, breaches of Truſt, negligences, miſ-imployment, not imploying, concealing, defrauding, miſ-converting, and miſ-government of the ſame Lands, Tenements, Stocks of Money, and other things given to any the Charitable Uſes aforeſaid: And thereof you ſhall make a true Preſentment, according to your Evidence, and the beſt of your knowledge.* So God help you.

It is convenient to have the *Inquiſition* ready drawn in Paper, eſpecially as to Wills and Deeds, and the breaches of Truſt, *&c.* and matters of Fact, that ſo the Jury having a Draught ready, may, with eaſe, amend, and make it ready to be engroſſed, and ſo ſave the Jury the trouble of another meeting.

CHAP. IV.

INQUISITIONS.

I.

Eſſex. ſſ. AN *Inquiſition* indented, taken at *L.* in the County aforeſaid, the four and twentieth day of *M.* in the year of our Lord 1658. before *W. C. R. S.* &c. by vertue of a Commiſſion under the Great Seal of *England*, to them and others directed, for the due executing of a Statute, made in the High Court of Parliament, holden the 27 day of *October*, in the three and fortieth year of the Reign of the late Queen, Entituled, *An Act to redreſs the miſ-imployment of Lands, Goods, and Stocks of Money heretofore given to Charitable Uſes.* By the Oaths of, *&c.* honeſt and lawful men of the County aforeſaid, who being duly returned, impanelled and ſworn, according to the ſaid Statute and Commiſſion, ſay upon their Oath, That *M. G.* late of *W.* in the County of *E.* Widow, deceaſed, long before her death, did hold, to her and her Heirs, of the then Lady of the Mannor of *W.* in the ſaid County of *E.* by Copy of Court Roll, according to the cuſtom of the ſaid Mannor, all that Meſſuage, with the Appurtenances, ſcituate and lying at *P.* of the yearly value of, &c. above all charges and reprizes. And the Jurors aforeſaid, do further ſay upon their oath, That the ſaid Tenement and Premiſſes were divers years in the life-time of the ſaid *M. G.* held and enjoyed by *D. B.* late of *S.* deceaſed, and that the ſaid *M. G.* did, in her life-time, and long before her death, aſſign, limit, and appoint, that thirty ſhillings of the Rent of the ſaid Tenement and Premiſſes, ſhould be yearly imployed and beſtowed, in and for the relief of the poor people, for the time, and from time to time, being in *W.* aforeſaid, for ever, and that the ſum of thirty ſhillings *per annum* was yearly, for divers years together in the life-time of the ſaid *M. G.* and by her direction, gift, and appointment, paid to the Church-Wardens of the ſaid Pariſh for the relief of the Poor there. And the Jurors aforeſaid, do further ſay upon their Oath, That the ſaid *M. G.* to the intent the ſaid yearly ſum of thirty ſhillings might be the better ſecured to be paid unto the Poor of the ſaid Pariſh of *W.* in her life-time (*to wit*) the, &c. did ſurrender the ſame Tenement and Premiſſes, according to the cuſtom of the ſaid Mannor, into the hands of the then Lady of the ſaid Mannor, to the uſe of ſuch perſon and perſons, and to the uſe and intent of the Teſtament or laſt Will of the ſaid *M. G.* as by the Copy of the Court-Roll of the ſame Mannor to the Jurors aforeſaid in evidence now ſhewed, it doth and may appear. And the Jurors aforeſaid, do further ſay upon their oath, That the ſaid *M. G.* after the making of the ſaid Surrender, did declare her Will, Mind, and Deſire to be, and did aſſign, limit,

and

and appoint, That thirty ſhillings, out of the ſaid Rents, Iſſues and Profits of the ſaid Tenement and Premiſſes, ſhould yearly, and every year for ever then after, be paid to the Churchwardens of the Pariſh of *W.* aforeſaid, for the time, and from time to time being, for and towards the relief of the poor People of the pariſh of *W.* aforeſaid. And the Jurors aforeſaid, do further ſay upon their oath, That the ſaid *M. G.* on, or about the day of, &c. died, and that the ſaid *D. B.* having notice of the Charitable Deviſe, Aſſignment and appointment of the ſaid *M. G.* aforeſaid, to, and for the pious Uſe aforeſaid, did for ſome years after the death of the ſaid *M. G.* hold and enjoy the ſaid Tenement and Premiſſes, and did pay the ſame thirty ſhillings yearly to the Church-Wardens of the ſaid Pariſh, for the relief of the poor of *W.* aforeſaid, accordingly. And the Jurors aforeſaid, do further ſay, upon their Oath, That ſince the death of the ſaid *M. G.* the ſaid *D. B.* during his life, and from and after his death, *R. B.* Son of the ſaid *D. B.* have held and enjoyed the ſaid Tenement and Premiſſes, and received, and hath taken the Rents and Profits thereof, as owners of the ſame Premiſſes, by vertue, as they affirm, of ſome ſurrender, or other aſſurance thereof made by *J. G.* deceaſed, who was Son and Heir of *M. G.* And that the ſaid *R. B.* and——*B.* have, for the ſpace of theſe eight years, now laſt paſt, detained the ſaid Gift of thirty ſhillings from the ſaid Charitable Uſe, to, and for which the ſame was deviſed, aſſigned and limited, as aforeſaid. And that at the Feaſt of &c. there was, and yet is, the ſum of &c. of the ſaid yearly payment of thirty ſhillings *per annum* ſo deviſed, limited, aſſigned and appointed by the ſaid *M. G.* to, and for the Charitable Uſe, Intent, and Purpoſe aforeſaid, behind, arrear and unpaid. *In witneſs*, &c.

II.

Eſſex ſſ. AN *Inquiſition* indented, taken at the *S.* at *B.* in the ſaid County, the day of &c. before *J. W. W E.* &c. Gent. by vertue of a Commiſſion under the Great Seal of *England*, bearing date, &c. to them and divers other perſons directed, for the due execution of a Statute made in the High Court of Parliament, holden the 27 day of *October*, in the three and fortieth year of the Reign of the late Queen *Elizabeth*, Entituled, *An Act to redreſs the miſ-imployment of Lands, Goods, and Stocks of Money heretofore given to Charitable Uſes*, by the Oaths of *J. F. R. L.* &c. honeſt and lawful Men of the ſaid County, who being duly returned, impanelled, and ſworn according to the ſaid Statute and Commiſſion, do ſay, upon their Oaths, That one *M. B.* on, or about the day of &c. was ſeized in his Demeſne, as of Fee, of, and in one Meſſuage, &c. And that the ſaid *M. B.* being ſo ſeized of the ſaid Meſſuage and Premiſſes aforeſaid, he the ſaid *M. B.* made his laſt Will and Teſtament in Writing, bearing date the day of, &c. and by the ſame his ſaid Will, did, amongſt other things, give, demiſe, and bequeath the ſaid Meſſuages, called *C.* to *A.* his Wife, during her life; and after her deceaſe, to the Church of *T.* aforeſaid, in theſe words following: *Item, I give*, &c. And the Jurors aforeſaid do further ſay, upon their oaths, That one *T. K.* on, or about the day of &c. did enter into the ſaid Meſſuages and Premiſſes called *C.* and, by himſelf and his under-Tenants, poſſeſſed and enjoyed the ſame, and took and received the Rents and

and Profits thereof during his life, paying only ſeven Nobles *per ann.* out of the Rents and Profits of the ſame, to the Church-Wardens and Pariſh of *T.* to, and for the Chaitable Uſe aforeſaid: And the Jurors aforeſaid do further ſay, upon their Oaths, That after the death of the ſaid *T. K. E. K.* Son of the ſaid *T. K.* now alſo deceaſed, entered into the ſaid Meſſuages and Premiſſes, and, by himſelf and his under-Tenants, did take and receive the Rents and Profits thereof, during his life, and continued the payment of the ſaid ſeven Nobles *per annum* for the ſame to the ſaid Church, until about twelve years laſt paſt, at which time the ſaid *E K.* did refuſe to continue the payment of the ſaid Seven Nobles *per ann.* any longer. And the Jurors aforeſaid do further ſay upon their Oaths, that the ſaid Meſſuages, ſo as aforeſaid deviſed, was divers years ſince made, divided and converted into ſeveral Tenements. And that the ſaid Meſſuage or Tenement, called *C.* and now commonly called by the name of the *Church-Houſe*, is now, and, for divers years laſt paſt, hath been in the poſſeſſion of *E. C.* And that the ſaid Houſes, Tenements, and Cottages in *T.* aforeſaid, now in the Tenure or Occupation of *E. P.* Widow, were formerly Out-houſes belonging to, and parcel of the ſaid Meſſuage and Premiſſes, with the Appurtenances, called *C. aliat* the *Church-Houſe*. And the ſaid Jurors do further ſay, upon their Oaths, That the ſaid Meſſuage or Tenement, Houſes and Premiſſes, now are, and, for theſe ſix years laſt paſt, have been of the clear yearly value of, &c. above the Moneys payable out of the Rents and Profits thereof; to, and for the ſuperſtitious uſes above-mentioned, and all other charges and reprizes. And the Jurors aforeſaid, do further ſay, upon their Oaths, That ſithence the death of the ſaid *E. K.* which happened about two years ſince, the Rents of the Meſſuage, Tenement, and other the Premiſſes, have been claimed by *T. K.* Son and Heir of *E. K.* as belonging to him, as Son and Heir to his ſaid Father; and that the ſaid Meſſuage, Tenement, and Premiſſes have been enjoyed and diſpoſed of by him the ſaid *T. K.* and his under-Tenants, and the Iſſues, Rents and Profits growing and ariſing out of the ſame, for theſe two years laſt paſt, have been received and enjoyed by the ſaid *T. K.* and by him converted to his own particular uſe and benefit. In witneſs whereof, to one part of this preſent *Inquiſition*, delivered by the ſaid Jurors to the ſaid Commiſſioners, and by them to be returned into the High Court of *Chancery*, as well the ſaid Commiſſioners, as the ſaid Jurors have ſet their Hands and Seals, and the other part thereof, remaining with the Foreman of the ſaid Jurors, the ſaid Commiſſioners have ſet their Hands and Seals, the day and year firſt above-written.

III.

Devon. ff. AN *Inquiſition*, &c. By the Oaths of, &c. who being duly returned, impannelled, and ſworn, according to the ſaid Statute and Commiſſion, ſay, upon their Oaths, That on or about the 10*th* day of *J.* in the twentieth year of the Reign of *Henry* VIII. late King of *England*. *J. C. R. A. J. C. T. B. W. C. W. S. T. T.* and *T. W.* as Feoffees in Truſt for one *J. B.* ſometimes of *E.* in the ſaid County, Yeoman, deceaſed, ſtood joyntly ſeized of, and in their Demeſne, as of Fee in one Meſſuage, with the Appurtenances, ſcituate and being in *G.* in the County aforeſaid

aforeſaid, *&c.* And that the ſaid *J. C. R. A.* and other the aforeſaid Feoffees, being ſo, of the ſaid Meſſuage, Lands and Premiſſes, ſeized in Truſt as aforeſaid; the ſaid *J B.* made his laſt Will and Teſtament in Writing, bearing date the ſixteenth day of *A.* in the ſaid twentieth year of the Reign of the ſaid late King *H.* 8. and by the ſame, did Will, Declare, and Appoint, that they the ſaid *J. C. R. A.* and other his Truſtees aforeſaid, their Heirs and Aſſigns, and all ſuch other perſon and perſons as ſhould ſtand ſeized of the ſaid Meſſuage, Lands and Premiſſes, with the appurtenances, from time to time, of the Iſſues and Profits coming and growing of the ſaid Tenement and Lands, ſhould ſufficiently repair, new build, and maintain the Houſes, Edifices and Buildings of the ſaid Tenement, as often, and when as need ſhall be for evermore. And further, that the ſaid Feoffees, of the Iſſues and Profits coming of the ſaid Tenement, Lands, and other the Premiſſes, with the Appurtenances, ſhould do, keep and find, on the day of the moneth, that the ſaid *J. B.* deceaſed, or within ſix days before, or within ſix days after, an yearly *Obit* or *Aniverſary* within the aforeſaid Pariſh Church of *E.* for the Soul of the ſaid *J. B* the Souls of his Father and Mother, his Wife and Children, and all Chriſtian Souls; and that the Feoffees of their aſſignes, ſhould expend yearly at every *Obit* ſo kept, and for his Name to be had in the Bedroll, 6s. 8d. And that all other Iſſues and Profits, coming, and growing of the ſaid Tenement, Lands, and other the Premiſſes, with the Appurtenances over and above the ſaid Edifices, and Reparations, and the ſaid 6 s. 8 d. for the ſaid *Obit* and *Bedroll* ſhould be expended, diſtributed, and laid out in making and mending of the High-ways, between *H.* in the ſaid County, and the City of *L.* and in other deeds of Piety and Charity, by the diſcretion of two of the ſaid Feoffees. Provided always, that the Profits of all Woods, and Woodſale, that ſhould come and grow of the Grove called *R.* ſhould be diſtributed one time to the uſe of the aforeſaid Pariſh Church of *E.* and at another time, to the uſe of the Pariſh Church of *T. G.* aforeſaid, the Profits of the firſt Wood-ſale, to the uſe of the Pariſh Church of *E.* And further, that two perſons being Feoffees of, and in the ſaid Tenement, and Lands, and other the Premiſſes, with the Appurtenances, ſhould take and levy to the uſes aforeſaid, all the Iſſues and Profits of the ſame, and to diſtribute and diſpoſe them in manner and form, as the ſaid *J. B.* hath before willed and declared: Provided always, that no perſon which ſhould have the levying and gathering of the ſame Iſſues and Profits of the ſaid Tenements, Lands, and other the Premiſſes, with the Appurtenances, ſhould levy and gather them over and above one whole year together, but that yearly an Election to be made of two perſons of the ſaid Feoffees, to be Renters and Gatherers of the ſaid Iſſues and Profits, to the uſe and intent before expreſſed; And that the ſaid Perſons ſo elected and named Renters and Gatherers, ſhould yearly give up their account before the reſidue of the ſaid Feoffees, which ſhall ſtand ſeized of, and in the ſaid Tenement, Lands, and other the Premiſſes, with the Appurtenances, or before the moſt part of them, on the day of *S. J.* in *Chriſtmas* week, and that every perſon ſo levying and gathering the ſaid iſſues of the ſaid Tenement and Lands, ſhall have for their labour and buſineſs in that behalf, 12 *d.* And that ſuch perſons as were ſeized, and infeoffed at the making and declaring

claring of his ſaid Teſtament and laſt Will, of, and in the ſaid Tenement, Lands, and other the Premiſſes, with the Appurtenances, ſhould make an Eſtate and Feoffment of, and in the ſame, unto 24 honeſt perſons, dwelling and inhabiting within the aforeſaid Pariſhes of *E.* and *T. G.* And that the ſaid 20 perſons, and their Heirs, ſhould ſtand ſeized and enfeoffed of, and in the ſaid Tenement, Lands, and other the Premiſſes, with the Appurtenances, to the uſe and performance of the ſaid Teſtament, and laſt Will of the aforeſaid *J. B.* And at ſuch time, and when it ſhould fortune the ſaid 24 perſons to deceaſe, or void the ſaid Pariſhes, to the number of eight perſons, ſo that there were not living and inhabiting within the ſaid two Pariſhes of the ſaid Feoffees, over and above eight perſons; That then the ſaid eight perſons ſo ſurviving and inhabiting, ſhould make an Eſtate and Feoffment of the ſaid Tenement, Lands, and other the Premiſſes, with the Appurtenances, unto 24 honeſt perſons, dwelling and inhabiting within the ſaid Pariſhes, to have and to hold the ſaid Tenement, Lands, and other the Premiſſes, with the Appurtenances, unto the ſaid twenty four, and to their Heirs, to the uſe and performance of the ſaid Teſtament, and laſt Will of the aforeſaid *J. B.* And as often as it ſhall happen the ſaid Feoffees, to come to the number of eight, in form aforeſaid; the ſame eight perſons, ſo often to make an Eſtate and Re-feoffment of the ſaid Tenement, Lands, and other the Premiſſes, with the Appurtenances, to twenty four honeſt perſons of the ſaid Pariſhes, and ſo from time to time, as often as any ſuch Caſe ſhall happen, or fall, for evermore; as by a certain Indenture, bearing date the 29 day of *D.* in the year of our Lord God, 1518. and in the ſaid 10*th* year of the Reign of King *Henry* the 8*th*, now ſhewed forth in evidence to the ſaid Jurors, by the preſent Feoffees of the ſaid Tenement and Premiſſes more at large it doth and may appear. And the ſaid Jurors do further ſay upon their Oaths, that the ſaid *I. C. R. A.* and others the Truſtees aforeſaid, being ſo ſeized of the ſaid Tenement, Land and Premiſſes, in Truſt, as aforeſaid; They the ſaid *J. C. R. A.* and other the Truſtees aforeſaid, did by a certain Deed or Writing, bearing Date, on, or about the ſaid twentieth day of *D.* in the ſaid tenth year of the Reign of the ſaid King *Henry* the VIII. convey the ſaid Tenement, Lands and Premiſſes, with the Appurtenaces, unto *J. A.* of *E.* aforeſaid Mercer, and *J. W.* of the ſame, Yeoman, their Heirs and Aſſigns, to fulfill the Will of the ſaid *J. B.* And that they the ſaid *J. A.* and *J. W.* being of the ſaid Tenement, Lands, and Premiſſes, with the Appurtenances ſeized; They the ſaid *J. A.* and *J. W.* did by their Deed of Feoffment, execute by Livery and Seiſin, bearing date the ſaid 29 day of *D.* in the ſaid tenth year of the Reign of the ſaid King *Henry* the VIII. convey the ſaid Tenement, Lands, and Premiſſes, with the appurtenances, unto *R. A.* of *T. G.* aforeſaid, *R. A.* and *W. A.* Sons of the ſaid *R. W. A.* the elder; *F. A.* Son of the ſaid *W. A.* the elder, *T. T.* alias *L. R. I. T.* Son of the ſaid *T. T. H. A.* Son of the ſaid *J. A. H. B. R. B.* Son of the ſaid *H. B. W N.* the younger, *J. P. W. P.* Sons of *R. P. R. P.* the younger, *T. M.* the elder of *T. G* aforeſaid, *T. T.* Son of *H. T. W. C. W. S. W. A.* Son of *J. A. W. S. J. S.* Son of the ſaid *W. S. T. S. J. S.* Son of the ſaid *T. S. J. W.* Son of *R. W. J. B.* the elder, *H. H.* the younger, and *S.* Son of *W. S. W. B.* Son of *B. B.* add *J. P.* of *E.* aforeſaid, as by the ſaid laſt recited Deed of Feoffment, now alſo ſhewed forth

in

in evidence to the ſaid Jurors, by the ſaid now preſent Feoffees of the ſaid premiſſes may appear: And the ſaid Jurors do further ſay, upon their Oaths, that about *N.* in the ſixth year of the Reign of the late Queen *Eliz.* *H. A.* and *R. A.* Sons of *W. A.* deceaſed; *J. R.* and *J. R.* Son of the ſaid *I. F. A.* and *R. A.* Son of the ſaid *F. S. A.* Son of *H. A.* deceaſed, *J. W.* Son of *J. W.* deceaſed, *J. A.* Son of *J. A.* of *B.* deceaſed, *W. C.* Son of *W. C.* of *T. G.* aforeſaid, *W. A.* and *J. A.* and *J. A.* Son of the ſaid *W. S. A.* and *T. A.* Sons of the ſaid *H. A.* deceaſed, *J. S.* and *A. S.* Son of the ſaid *J. S.* Son of *T. S.* deceaſed, and *S.* Son of *T. S. J. S.* Son of *E. S.* deceaſed, and *J. B.* the elder of *E.* aforeſaid, being then Feoffees of the ſaid Tenement, Lands, and Premiſſes, with the Appurtenances, they the ſaid laſt mentioned Feoffees, did then exchange with one *F. L.* a certain parcel of Meadow called *C.* parcel of the ſaid Lands, before-mentioned, containing, by eſtimation, two Acres and an half, or thereabouts, for two Acres and an half, of Land called *A.* lying amongſt other Lands, that were the ſaid *B.* the which two Acres and an half of Lands ſo taken and exchanged by the ſaid Feoffees, from the ſaid *F. L.* the ſaid Feoffees and their Aſſigns have quietly enjoyed ever ſince; but whether the ſaid Lands taken in exchange, be of equal yearly value with the Meadow given in exchange, by the ſaid Feoffees, to the ſaid *F. L.* the ſaid Jurors know not.

And the ſaid Jurors do further ſay, upon their Oaths, That the ſaid Tenement, Lands, and Premiſſes, with the Appurtenances that were the ſaid *J. B.* have been ever ſince the ſaid *B.* death continued in Feoffment to divers and ſundry perſons, by ſeveral conveyances, to the uſe and performance of the Will of the ſaid *J. B.* as appears by divers Deeds unto the Jurors aforeſaid, in evidence therein, at the time of the taking of this *Inquiſition*, and that upon view of the ſaid evidences, it appeared that divers Feoffments have been made of the ſaid Premiſſes by ſurviving Feoffees, to their Children, and others of their alliance, by which means, the intereſt of the ſaid Premiſſes hath been continued in the name and bloud of ſeveral Families, that have lived in the ſaid Pariſhes, and that thereby divers Knights, Eſquires, and Gentlemen of worth and quality have been left out, that have been then Inhabitants of the ſaid Pariſhes. And the Jury aforeſaid do further ſay, upon their Oaths, that the ſaid Tenement, Lands, and Premiſſes, with the Appurtenances, are now by mean Conveyance and Aſſurance, come unto *J. S.* of *E.* aforeſaid, Gent. *W. C.* of *T. G.* aforeſaid, Gent. *A. S.* of *E.* aforeſaid, Gent. and to divers others, being in all, about 18 in number; and that the ſaid *J. S.* and *A. S.* and their Anceſtors, have been Feoffees of the ſaid Premiſſes, ever ſince the year of our Lord God, 1611. and that they, and the other Feoffees now living, claim no intereſt in the ſaid Premiſſes, but as Feoffees in Truſt for performance of the Will of the ſaid *J B.* and the ſaid *J. S. W. C. A. S.* and divers others of the now Feoffees, appearing before the ſaid Commiſſioners, and the ſaid Jurors, at the time and place firſt above-mentioned, and did then and there produce two Books that have been kept by them and others, under whom they claim, wherein are ſet down the Accounts of the yearly Revenues and Profits that have been made of the ſaid Premiſſes, from the year of our Lord God 1587. and divers years before, until this preſent. And upon our view of the ſaid Books it appeareth, that the Truſt of the ſaid Will hath been managed by ſome few of the 24 Feoffees,

the reſidue giving an implicite Conſent to what ſuch few ſhould do, both concerning the beſtowing of the yearly Revenue of the ſaid Premiſſes, and of the ſaid Woodſales; as alſo in election of Rent-gatherers, and in making up an allowance of the yearly accounts. And it did alſo further appear by view of the ſaid Books, that the yearly accompts therein ſet down, are imperfect, and that there are many alterations in the figures of the ſums of Money, expended by the ſaid Rent-gatherers, and that the Accompts therein ſpecified, are for the moſt part, made by disburſements of ſums of Money in the general, with reference unto particular Bills, not ſet down in the ſaid Books, and that at one time, or in two, or three years together, no Accompts were made by the Rent-gatherers: and that the ſaid Feoffees have failed to elect, yearly, new Rent-gatherers: And that they have allowed unto the Tenant of the ſaid Houſe and Lands, out of his Rent, ſometimes 40 s. for a Dinner, at their meeting; and that the ſaid Feoffees and Rent-gatherers, have from time to time, kept Moneys in their hands, which they have received for Rent of the ſaid Houſe and Lands, which they call in their Books of Accompts, Houſe-money; and divers ſums of Money which they have received by ſale of the Wood in *R. W.* which they call Church-Money; and that ſometimes they have expended the Houſe-money upon the Church; and ſometimes the Church-money upon the High-ways; and have entred their Accounts, as Money borrowed of the Church, for the Houſe; and of the Houſe for the Church; and they have brought into Accompt divers ſums of Money, to have been expended by them yearly, upon the ſaid Churches of *E.* and *T. G.* And the *Ms.* and *Cs.* having Certificates in Writing, what Moneys have been expended yearly by the ſaid Rent-gatherers, in repair of the ſaid Churches, from the year 1611. until this preſent time; and upon comparing the ſaid Certificates, with the ſaid Book of Accompt, it doth appear; That in ſome years, wherein the ſaid Rent-gatherers have ſet down in their Accompts, to have expended Moneys in the repair of the ſaid Churches, that nothing was then ſet down in the ſaid Church-Books, to have been expended by the ſaid Rent-gatherers; in ſome years the ſums of expenſes do agree with the Church-Book; in ſome years more is ſet down in the Rent-gatherers Book, to have been expended upon the ſaid Churches, than the ſaid Church-Book. And the ſaid Jurors, do further ſay, upon their Oaths, That ſithence the year, 1611. until this preſent, divers Feoffees, ſome whereof are yet living, have been at ſeveral times Rent-gatherers and Feoffees; And that for the moſt part of that time, the yearly Revenue and Rent of the ſaid Houſe and Lands, have been about 20*l.* which according to their accompts, have been expended yearly in repair of the High-ways, between *M.* and ſome 3 or 4 miles of *E.* and for their Dinner at their meetings, and by giving of 40 *s.* or more, in ſome years, to ſeveral poor perſons, inhabiting in the ſaid Pariſhes; And that in that time, Woodſales have been made of the Woods growing in *K.* Grove; and that the Moneys thereupon ariſing, have been kept in their hands theſe three years, and they have new built the ſaid Houſe called *S.* and improved the ſaid Tenement and Lands to be worth 26*l.* 13*s.* 4*d.* *per annum* to be Letten: And further, the ſaid Jurors do ſay upon their Oaths that the yearly expenſes of the ſaid Feoffees, have been (by Auditors appointed by the ſaid Commiſſioners, in the preſence of ſome of the ſaid Feoffees) caſt, and upon

on, and by the ſaid Auditors Certificate it appears, that over and above all Charges and Expenſes by the ſaid Feoffees, until this preſent time, in building the ſaid Houſe, repair of the High-ways, Gifts of Money to poor People, Moneys expended in Dinners, and repair of the ſaid Churches, there doth at this time remain in the hands of *J. S. &c.* the now Feoffees of the ſaid Tenements, Lands, and Premiſſes, or in the hands of ſome of them, the ſum of 54 l. 14s. 5 d. or thereabouts, to the Church of *E.* and 56l. 5 s. 1 d. or thereabouts, unto the Church of *T. G.* The which ſeveral ſums, divers of the Pariſhioners, of the ſaid ſeveral Pariſhes of *T. G.* and *E.* of good ability, have deſired the ſaid Feoffees to deliver unto them for a Church-ſtock for their ſeveral Pariſhes, to be by them beſtowed, to the uſe of the ſaid ſeveral Churches, according to the ſaid Will of the ſaid *F. B.* But they the ſaid now Feoffees, or ſome of them, have, and do refuſe to deliver the ſame unto them. And the ſaid Jurors do further ſay, upon their Oaths, that ſometimes the ſurviving Feoffees have ſuffered the intereſt of the ſaid Premiſſes, to continue in them, until under the number of eight Feoffees were ſurviving, and Inhabitants of the ſaid Pariſhes. And that the ſaid laſt Feoffment, made of the ſaid Premiſſes, by the then ſurviving Feoffees, divers of the ſaid laſt Feoffees are ſince dead; ſo that at this preſent, they are but to the number of 19 Feoffees, living, and inhabiting within the ſaid Pariſhes of *E.* and *T. G. In witneſs, &c.*

IV.

Devon. ſſ. AN Inquiſition taken, &c. before &c. By vertue of a Commiſſion under the Great Seal of *England*, bearing date at *Weſtminſter* the 6 day of *M.* in the year of our Lord God, 1650. to them, and divers other perſons, dwelling and inhabiting within the ſaid County directed for the due execution of a Statute, made in the High Court of Parliament, holden the 27 day of *O.* in the 43 year of the Reign of our late Sovereign Lady Q. *Elizabeth*, Entituled, *An Act to redreſs the miſimployment of Lands, Goods, and Stocks of Money, heretofore given to* Charitable Uſes, by the Oaths of *&c.* good and lawful Men of the ſaid County of *D.* who being ſworn. *&c.* ſay upon their Oath, That *J. T.* late of *L.* Merchant, deceaſed, was in his life-time, and at the time of his death, poſſeſſed of a perſonal Eſtate of great value: and that the ſaid *J. T.* did heretofore make his laſt Will and Teſtament, bearing date the 10th day of *O.* which was in the year of our Lord God. 1649. and by the ſame Will, did nominate, conſtitute, and appoint *W. L.* of *T.* and *T. H.* of *L.* in the County of *C.* Gent. the Executors of the ſaid Will: And that afterwards the ſaid *J. T.* did make a Codicil, which was annexed to his laſt Will and Teſtament, and which he did appoint to be part of his ſaid Will: And that the ſaid *J. T.* in, and by the ſaid Codicil, did, among other things, make ſuch recital, diſpoſition, limitation, and appointment, as followeth in theſe words; That is to ſay, *And whereas I have not finiſhed the Almes-houſes by me already begun, and do intend, that eight poor people of the ſaid Pariſh of* M. *ſhall be placed therein, when finiſhed, and receive* 50 s. *apiece yearly, by quarterly payments, for their maintainance, during their lives, and purpoſe that the ſame ſhall be ſo continued and ſupplied for ever, with poor peo-*

ple of that Pariſh, and with that yearly maintainance. Now I J. T. *Teſtator, named in the ſaid Will, do hereby Will and appoint mine Executors,* W.L. and T. H. *in my ſaid Will named, to finiſh the ſaid Alms-houſes with all ſpeed, out of the Surplus of my Eſtate, not diſpoſed by the ſaid Will, nor by this Codicil; and likewiſe therewith to purchaſe ſo much Freehold Land in Fee-ſimple, and ſettle and aſſure the ſame upon Feoffees, for the maintainance of eight poor people of* M. *Pariſh aforeſaid, for ever, to be placed in the ſaid Alms-houſes at* M. *aforeſaid, as ſhall be convenient.* And the Jurors aforeſaid do further ſay upon their Oaths, that the ſaid *J. T.* afterwards, *That is to ſay,* on the 22 day of *D.* dyed. And that the ſaid *W. L.* and *T. H.* proved the ſaid Will and Codicil of the ſaid *J. T.* and took upon them the Execution thereof: and that they the ſaid *W. L.* and *T. H.* after the death of the ſaid *J. T.* did finiſh the building of the ſaid Alms-Houſes before-mentioned, out of the Eſtate of the ſaid *J. T.* And that the ſaid *T. H.* did place eight poor people in the ſaid Alms-houſes there: But the Jurors aforeſaid, do likewiſe ſay upon their Oaths, That the ſaid *W. L.* and *T. H.* in the ſaid Will of the ſaid *J. T.* named, have not, nor either of them hath, out of the Eſtate of the ſaid *J. T.* (appointed or limited for that purpoſe, or otherwiſe) as yet purchaſed, ſetled, or aſſured freehold Land in Fee-ſimple, of the clear yearly value of 20 *l.* by the year, as by the ſaid Will and Codicil is intended and appointed upon Feoffees, or Truſtees, for the maintainance of eight poor people of *M.* aforeſaid, for ever; placed, and to be placed in the ſaid Alms-houſes, as by the ſaid Codicil is directed, limited, and appointed; and that in further breach of the Truſt in them, the ſaid *W. L.* and *T. H.* repoſed in, and by the ſaid Will and Codicil, they the ſaid *W. L.* and *T. H.* have not paid unto the poor people, formerly placed in the ſaid Alms-houſes, and now remaining there, namely, *A. B. &c.* their ſeveral and reſpective yearly allowances of 50 s. the year, appointed them by the ſaid *J. T.* as aforeſaid, by the ſpace of two years, ending at the Feaſt of the Annunciation of the Bleſſed Virgin *Mary* laſt paſt, amounting in all, to the ſum of 20 l. but do detain and with-hold the ſame Money, from them the ſaid poor People. And the ſaid Jurors do further ſay, upon their Oaths, That the ſaid *W. L.* and *T. H.* have Aſſetts of the ſaid *J. T.* in their hands (of the Surplus of his Eſtate, not diſpoſed of by his ſaid Will and Codicil) ſufficient to purchaſe ſo much Freehold Land in Fee-ſimple, as may be convenient for the maintainance of eight poor people, placed, and to be placed in the ſaid Alms-houſes, in ſuch manner as the ſaid *J. T.* hath in, and by his ſaid Will and Codicil willed, directed, limited, and appointed, *In witneſs,* &c.

CHAP.

CHAP. V.

DECREES.

I.

Devon. ſſ. AT S. in the ſaid County, the 19 day of *F.* in the 11 year of the Reign of our Sovereign Lord *Charles*, by the Grace of God, King of *England, Scotland, France*, and *Ireland*, Defender of the Faith, *&c.*

Whereas a Commiſſion, under the Great Seal of *England*, bearing date at *Weſtminſter*, the eighth day of *Feb.* laſt, hath been directed, amongſt others, to Sir *W. R.* Knight, *&c.* and to divers other perſons, dwelling and inhabiting within the ſaid County, authorizing them, or any four or more of them, to enquire, as well by the Oaths of 12 good and lawful men, or more, of the ſaid County, as by other good and lawful ways and means, of all and ſingular Lands, Tenements, Rents, Annuities, Profits, Goods, Chattels, Money, and Stocks of Money, heretofore given, limited, appointed, and aſſigned by any well-diſpoſed perſon, to, and for any the Charitable and Godly Uſes in the ſaid Commiſſion mentioned within the ſaid County: And of the Abuſes, Breaches of Truſts, Negligences, Miſ-imployments, not-imploying, concealing, defrauding, miſconverting, or miſ-government of the ſaid Lands, Tenements, Rents, Annuities, and other things; and for the ſetting down ſuch Orders, Judgements and Decrees, as that the ſame Lands, Tenements, Rents Annuities, Profits, Goods, Chattels, Money, and Stocks of Money, may be duly and faithfully imployed, to, and for the *Charitable Uſe* and intents for which they were given, limited, aſſigned or appointed by the Donors and Founders thereof, according to a Statute made in the 43 year of the Reign of the late Queen *Elizabeth*, Entituled, *An Act to redreſs the miſimployments of Lands, Goods, and Stocks of Money, given to Charitable Uſes.* And whereas the ſaid Sir *W. R.* &c. being ſeven of the Commiſſioners named and authorized, in and by the ſaid Commiſſion, meeting for the execution of the ſaid Commiſſion, at the day and place aforeſaid; it was then and there found, by the Oaths of *F. M. F. B. &c.* good and lawful men of the ſaid County, duely ſummoned, impannelled, and ſworn, according to the ſaid Statute and Commiſſion, that *A. B. &c.* and *J.* his wife, by their Writing, under their Seals, bearing date the 20 day of *F.* in the 5 year of the Reign of the ſaid Queen; and by, and according to a Grant and Licence from the ſaid Queen, duely obtained, did Found, Erect, and Incorporate a Free-School in *C.* by the name of the School-maſter, and Guardians of the Lands, Tenements and Poſſeſſions of the Grammar-School of *A. B.* Eſquire, in *C* in the County of *D.* and did name and appoint *G. H.* Presbyter, School-Maſter, and *A. B.* and *C. D.* Guardians of the ſaid Lands, Tenements, and Poſſeſſions, who, by vertue thereof, were School-maſter and Guardians of the Lands, Tenements, and Poſſeſſions, of the ſaid Grammar-School, and became, and were one body Corporate and Politick, both in name and thing: And that the ſaid School being ſo Erected, Founded, and Eſtabliſhed, and the School-maſter

ſter thereof, and the Guardians of the Lands, Tenements, and Poſſeſſions of the ſame School, being a Body Corporate and Politick as aforeſaid, the ſaid *A. B.* did make his laſt Will and Teſtament in Writing, bearing date, *&c.* and by the ſame, his ſaid laſt Will, according to the Licence of the ſaid Queen in that behalf granted, did (among other things) give and bequeath to *J. G.* the Mannor of *D.* with the appurtenances in the ſaid County of *D.* for the term of 21 years, paying yearly, during the ſaid term, the Rent of twenty pound. And that the ſaid *A. B.* by the ſame his ſaid Will, did give and bequeath the Reverſion and Remainder thereof, with the ſaid Rent, to the ſaid School-maſter and Guardians, To have and to hold the ſaid Mannor, and the ſaid Rent, and the Reverſion thereof, to them and their Succeſſors for ever, to the intent, that with the Iſſues and Profits thereof, they ſhould find ſix poor folks in *S.* in ſuch manner, as by him, or his Executors ſhould be appointed. And that afterwards in the Term of *Eaſter*, *viz.* On Wedneſday, being the third day of *May*, in the 20 year of the Reign of our ſaid late Sovereign Lady Queen *Elizabeth.* It was (among other things) by the Right Honourable Sir *N. B.* Knight, then Lord Keeper of the Great Seal of *England*, and her Majeſties Court of *Chancery* (by the aſſent and conſent of *W. B.* Eſq; Couſin and Heir to the ſaid *A. B.* Patron of the ſaid Grammar-School) Ordered, Adjudged, and Decreed, That the Statutes, Ordinances, and Conſtitutions, of, and for the ſaid Grammar-School; and of, and for the relief of certain poor people within the Pariſh of *S.* aforeſaid, of the Foundation of the ſaid *A. B.* and Dame *J.* his Wife, ſhould be made and ordered, by the appointment of *E.* then Biſhop of *Exeter*, or of his Succeſſors, and of *A. N.* then Dean of the Cathedral Church of St. *P.* in *E.* or his Succeſſors, and of the ſaid *W. B.* or his Heirs, and that *G.* late Biſhop of *E.* Succeſſor to the ſaid *E.* Biſhop of *London*; or *A. B.* of *S.* aforeſaid, Knight, Couſin and Heir to the ſaid *A. B.* deceaſed, and Couſin and Heir to the ſaid *W. B.* Eſquire, and Patron of the ſaid Grammar-School, and *F. D.* Dean of the ſaid Cathedral Church of St. *P.* in *E.* by a certain Writing indented, bearing date the Eighth day of *J.* in the Tenth year of the Reign of our late Soveraign Lord King *James*, over this Realm of *England*, *Ann. Dom.* 1612. did in performance of the ſaid Decree, Make, Ordain, Publiſh, and Declare, divers Statutes, Ordinances, and Conſtitutions, concerning the ſaid Grammar-School, the School-maſter, Guardians, and Poſſeſſions of the ſame; and that they the ſaid *G.* Biſhop of *E.* Sir *A. B.* the Heir of *F. D.* Dean of St. *P.* did in, and by the ſaid Writing indented (amongſt other things) by vertue of the ſaid Decree in particular, make, ordain, publiſh, and declare, certain Ordinances and Conſtitutions, concerning the Lands, Tenements, and Poſſeſſions of the ſaid School, in theſe words folllowing: *Item*, All Leaſes to be made by the ſaid Corporation of any their Lands, Tenements, or Hereditaments, being in the hands of any Farmer or Farmers, by vertue of any old or former Leaſe for years, ſhall be utterly void, unleſs the ſame old or former Leaſe for years be within fourteen years expiration of the ſaid years, by effluxion of time at the making of the ſaid new Leaſe, and be ſurrendred within one year next after the making of the ſame Leaſe. *Item*, The ſaid Corporation ſhall do their beſt endeavour for the preſervation and advancement of their Poſſeſſions, Rents,

Rents and Revenues, without making or conſenting to any diſheriſon to be had or made to the ſaid Corporation in any thing. *Item*, The ſaid *School-Maſter* and Guardians, ſhall not have any power to do or ſuffer any act to the diſheriſon of the ſaid Corporation, without the conſent of the Biſhop of *E.* and of the Patron for the time being; And that *G. H.* late *School-Maſter* of the ſaid *Grammar-School*, and *J. W.* and *W. C.* late Guardians of the Lands, Tenements, and Poſſeſſions of the ſame *School*, by a certain Deed indented, written in Parchment, and ſealed with the common Seal of the ſaid Corporation, bearing date the tenth day of *J.* in the Second year of the Reign of his Majeſty that now is, did, with one Aſſent and Conſent, Demiſe, Grant, Betake, and to Farm Lett, unto one *F. R.* late of *L.* Gent. his Executors and Aſſigns, the ſaid Mannor of *D.* with the Appurtenances thereunto belonging, for the term of One and twenty years, to commence from the Feaſt-day of the birth of our Lord God, then laſt paſt, before the date of the ſame Indenture of Demiſe, at, for, and under the yearly Rent of Twenty pounds of lawful Money of *England*.

And the ſaid *T. W.* late *Schoolmaſter* of the ſaid *Grammar-School*, Succeſſor to the ſaid *G. H.* and *J. F.* and *G. O.* Guardians of the Lands, Tenements, and Poſſeſſions of the ſame *School*, by a certain Indenture, bearing date the eighth day of *N.* in the thirteenth year of his now Majeſties Reign, reciting the ſaid former Leaſe ſo made to the ſaid *F. R.* as aforeſaid, did Demiſe, Grant, Sett, and to Farm Lett, unto *H. J.* late of *P.* in the ſaid County of *D.* Eſquire, his Executors and Aſſigns, all that the aforeſaid Mannor of *D.* with the Appurtenances, together with all the Lands, &c. thereunto belonging; to have and to hold the ſaid Mannor and Premiſſes to the ſaid *H. J.* his Executors, Adminiſtrators and Aſſigns, from the end and expiration of the ſaid firſt-mentioned Indenture of Leaſe; That is to ſay, from the Feaſt of the birth of our Lord God, which ſhall be in the year of our Lord God, 1642. unto the end and term of one and twenty years from thenceforth, next and immediately enſuing, and fully to be compleat and ended, for and under the yearly Rent of 50 l. of lawful Money of *England*: and that the ſame laſt-mentioned Leaſe or Demiſe, was allowed of by *P. L.* and Dame *E. B.* his Wife, as Patrons of the ſame *School*: And that the ſaid old or former Leaſe made and granted of the ſaid Mannor of *D.* and Premiſſes, with the Appurtenances by the ſaid *J. H.* precedent *School-maſter*, and the ſaid *T. C. J. W.* and *W. C.* to the ſaid *F. R.* as aforeſaid, was not within fourteen years of expiration of the years thereby granted by effluction of time at the making of the ſaid new Leaſe by the ſaid *T. C. J. W.* and *G. G.* to the ſaid *H J.* as aforeſaid, neither was the ſame old or former Leaſe ſo made and granted to the ſaid *F. R.* by the ſaid *J. H.* and *J. B.* as aforeſaid, ſurrendred or otherwiſe avoided within one year next after the making of the ſaid new Leaſe to the ſaid *H. J.* nor at any time ſithence. And that the ſaid Mannor of *D.* yet is, and at the time of the making of the ſaid Leaſe to the ſaid *H. J.* was worth ſixty pounds of lawful Money of *England*, *per ann.* And that the ſaid *T. C.* is dead, and that *T. O. Presbyter*, is now *School-Maſter* of the ſame *Grammar-School* of the ſaid *A. B.* Eſquire in *D.* aforeſaid. And that neither the ſaid *A. B.* nor *J.* his Wife made any direction, otherwiſe than

as aforeſaid, touching the Iſſues and Profits of the ſaid Mannor, as by the Inquiſition hereunto annexed, relation being thereunto had, more at large it doth and may appear. Now foraſmuch as it appeareth by the *Inquiſition* before recited; That by the Statutes, Ordinances and Conſtitutions concerning the *Grammar-School* before-mentioned, and the Lands, Tenements, and Poſſeſſions thereof: All Leaſes made by the ſaid Corporation of any their Lands, Tenements, or Hereditaments, being in the hands of any Farmer or Farmers, by vertue of any old or former Leaſe for years, ſhall be utterly void, unleſs the ſame old or former Leaſe for years be within fourteen years of expiration of the ſaid years by effluction of time, at the making of the ſaid new Leaſe, and be ſurrendred within one year next after the making of the ſame Leaſe: And for that it appeareth likewiſe by the ſaid *Inquiſition*; That the old or former Leaſe therein mentioned to be made and granted of the Mannor of *D.* before-mentioned by the ſaid *J. H. J. F.* and *G. O.* to the aforeſaid *R. F.* as aforeſaid, was not within fourteen years of expiration of the years thereby granted by effluction of time, at the making of the ſaid new Leaſe by the ſaid *T. C. J. W. G. G.* to the ſaid *J. H.* as aforeſaid And that the ſame old or former Leaſe ſo made and granted to the ſame *R. F.* by the ſaid *J. H.* and *J. F.* and *G. O.* as aforeſaid was not ſurrendred, nor otherwiſe avoided within one year next after the making of the ſaid new Leaſe to the ſaid *R. F.* or ever at any time ſince: And for that it appeareth, and therefore the making of the ſaid new Leaſe was a breach of Truſt in the ſaid *Schoolmaſter* and Guardians: Further alſo it appeareth by the ſaid *Inquiſition*, That the ſaid Mannor and Premiſſes ſo demiſed and granted to the ſaid *H. J.* as aforeſaid, at the Rent of Fifty pounds *per ann*, is worth Sixty pounds *per ann.* to be Lett; therefore, and and for other the matters and things in the ſaid *Inquiſition* appearing, the ſaid Sir *W. R.* &c. being ſix of the Commiſſioners named and authorized in, and by the ſaid Commiſſion, upon full hearing and debating of the matter by the Council, Learned in the Laws, appearing before the ſaid Commiſsioners, as well on the behalf of *T. F.* Son of the ſaid *H. J.* who claimeth an intereſt in the ſaid Mannor of *D.* for divers years yet to come, under colour of the Leaſe before-mentioned, made by the ſaid *J. H. J. B.* and *G. O.* to the ſaid *H. J.* as aforeſaid, do, by vertue of the ſaid Statute and Commiſſion, order, adjudge, and decree, That the ſaid Leaſe made and granted by the ſaid *J. A. J. B.* and *G. O.* to the ſaid *H. J.* was made contrary to the intent of the Donor of the ſaid Lands, and contrary to the Ordinances and Conſtitutions appointed for, and concerning the ſaid *School*, and the Lands, Tenements, and Poſſeſſions thereof, and is not warranted by all or any of them, but was and is an abuſe and miſgovernment of the ſaid Mannor and Lands, and a breach of Truſt in the ſaid *T. O. School-Maſter* of the ſaid *Grammar-School*, *J. B.* and *G. O.* Guardians of the Lands, Tenements, and Poſſeſſions of the ſaid *School*, and is a great and apparent prejudice and hinderance to the due and faithful imployment of the Profits of the ſame, according to the intent of the Donor, and a defrauding of a *Charitable Uſe* within the ſaid Statute, and that the ſaid Leaſe and the ſaid Mannor and Lands, and the Indenture of Demiſe for the paſſing of the ſame to the ſaid *F. R.* is, and from henceforth

ſhall

ſhall be, utterly void and of none effect; and the ſaid Commiſſioners do further order, adjudge, and decree, That the ſaid *T. O. Schoolmaſter*, and the Guardians of the Lands, Tenements, and Poſſeſſions of the ſame School, for the time being, ſhall and may Demiſe, Grant, and to Farm Lett, the ſaid Mannor of *D.* in ſuch manner as by the ſame Ordinances and Conſtitutions concerning the ſaid *School*, *Schoolmaſter*, and the Lands, Tenements, and Poſſeſſions thereof, is limited, declared, ordained, and appointed; the ſaid Leaſe ſo made of the ſame Mannor and Lands to *F. R.* aforeſaid notwithſtanding: And they the ſaid Commiſſioners do further order, adjudge, and decree, That the ſaid *T. R.* Eſquire, Son of the ſaid *F. R.* ſhall, within one month after notice of this Decree, deliver the Indenture of the ſaid Leaſe made unto the ſaid *F. R.* of the ſaid Mannor and Premiſſes as aforeſaid, to the ſaid *T. O.* or his Succeſſors, and Guardians of the Lands, Tenements, and Poſſeſſions of the ſame School, for the time being, to be cancelled; and ſhall likewiſe, within that time, pay unto the ſaid *T. O.* the ſum of 10 l. of lawful Money of *England*, for his Charges and Expenſes, in ſuing out the ſaid Commiſſion, and in the proſecution of the ſaid Inquiſition and this Decree, *Witneſs*, *&c.*

II.

SS. AT *R.* within the ſaid County of, on Tueſday the ninth day of *September*, in the one and twentieth year of the Reign of our Soveraign Lord, *Charles*, by the Grace of God, King of *England*, *Scotland*, *France* and *Ireland*, Defender of the Faith, *&c. An. Dom.* 1645. Whereas a Commiſſion under the Great Seal of *England*, bearing date the eighth day of *February* laſt paſt, hath been directed to *W. C. J. H. C. M. G. W.* Eſquires, and *G. M.* Gent. and to divers other perſons dwelling and inhabiting within the ſaid County, authorizing them, or any four or more of them, to enquire by the Oaths of twelve good and lawful Men, or more of the County, as by all other good and lawful ways and means, of all and ſingular Lands, Tenements, Rents, Annuities, Profits, Hereditaments, Goods, Chattels, Money, and Stocks of Money heretofore given, limited, appointed, and aſſigned by any well-diſpoſed perſon, to or for any the Charitable and Godly Uſes in the ſaid Commiſſion mentioned, within the ſaid County; and of the Abuſes, breaches of Truſts, Negligences, Miſimployments, not Imploying, Concealing, Defrauding, Miſ-converting, or Miſ-government of the ſame Lands, Tenements, Rents, Annuities, and other things; and for the ſetting down ſuch Orders, Judgements and Decrees, as that the ſame Lands, Tenements, Rents, Annuities, Profits, Goods, Chattels, Money, and Stocks of Money may be duly and faithfully imployed, to, and for the Charitable Uſes, and Intents, for which the ſame were given, limited, aſſigned, and appointed, by the Donors and Founders thereof, according to a Statute made in the 43 year of the Reign of the late Queen *Elizabeth*. Entituled, *An Act made to redreſs the miſimployments of Lands, Goods, and Stocks of Money heretofore given to* Charitable Uſes: And whereas the ſaid *W. C. J. H. C. M.* and *G. M.* being four of the Commiſſioners named and authorized in and by the ſaid Commiſſion, meeting for the execution thereof, at the day and place

aforeſaid; It was then and there found, by the Oaths of *J. F. R. L. &c.* good and lawful men of the ſaid County; That one *A. B.* as in and by the ſaid Inquiſition hereunto annexed, it doth and may appear, *&c.* Now they the ſaid *W. C. J. H. C. M. G. W.* and *G. M.* having heard the ſaid *T. H.* and his Council, touching the Premiſſes; and being of opinion, that the Gift of the ſaid Meſſuage, Tenements, and Premiſſes, by the ſaid *A. B.* in manner and form aforeſaid, is a good Gift, Limitation, Appointment, and Aſſignment of the ſame Meſſuage, Tenements and Premiſſes, to and for the ſaid *Charitable Uſe*, within the intent of the Statute before-mentioned; And for that it appeareth to the ſaid Commiſſioners by the ſaid Will and Inquiſition, that but only part of the Iſſues and Revenues of the ſaid Tenements and Premiſſes, were appointed by the ſaid Will, to be beſtowed to the maintainance of the Superſtitious Uſes, doth not amount to above twenty ſhillings *per ann.* at the moſt; And for that it doth not appear unto the ſaid Commiſſioners, That any part of the Rents and Tenements, and Premiſſes, Profits of the ſame, were at any time, within five years before the firſt day of the Parliament begun, the fourth day of *November* 1547. and in the firſt year of the Reign of King *Edward* the ſixth, late King of *England*, imployed, paid, or beſtowed to the maintainance of the ſaid *Obit*, and other the ſuperſtitious Uſes before-mentioned, or any of them. And foraſmuch as it appeareth by the intent of the ſaid Will, that Feoffees ought to be appointed ſucceſſively, and the ſaid Houſe and Premiſſes were to be conveyed unto them, for the more legal and faithful continuance and imployment of the Rents and Profits of the ſame, to the *Charitable Uſe* aforeſaid: to the end, intent, and purpoſe, therefore, that the Rents and Profits of the ſaid Lands, Tenements, and Premiſſes, may be duly and faithfully imployed in and for the *Charitable Uſe*, to and for which the ſame were limited, appointed, and aſſigned by the Donor thereof, as aforeſaid; They the ſaid *W. C. J. H. C. M.* and *G. M.* do, by vertue of the ſaid Statute and Commiſſion, order and decree, That the ſaid *T. H.* the Grandchild, *T. C. J. C.* and all and every other perſon and perſons now holding, occupying, or enjoying the ſame Meſſuages, Lands, Tenements, and Premiſſes before-mentioned, to and for the maintainance of the *Charitable Uſe* before-mentioned, and every of them, ſhall, within one month next after notice of this Decree, leave, ſurrender, and yield up the poſſeſſion of the ſaid Meſſuages, Lands, Tenements, and Premiſſes, unto, or for the Churchwardens of *T.* aforeſaid; and that the ſaid Churchwardens ſhall, within three months next after they ſhall be actually poſſeſſed of the ſaid Lands, Tenements, and Premiſſes, make and execute a Feoffment of the ſame Lands, Tenements, and Premiſſes, to the uſe of themſelves, and thirteen others of the Pariſhioners of *T.* aforeſaid, and their Heirs in ſuch manner, as by Counſel Learned ſhall be adviſed and directed, to the end, intent and purpoſe, that the Feoffees in ſuch Feoffment to be named, and their Heirs, may ſtand and be ſeized of the ſame Lands, Tenements, and Premiſſes, upon Truſt and Confidence, that they and their Heirs, ſhall permit and ſuffer the Churchwardens of the ſame Pariſh, for the time being, to receive, and take the Rents and Profits of the ſame Premiſſes from

from time to time, as the ſame ſhall ariſe, become due and payable, to and for the reparation of the ſaid Pariſh-Church of *S.* aforeſaid, as often, and when as need ſhall require; and that when ten or more of the ſaid Feoffees of the Premiſſes ſhall be dead (or before, if it ſhall be thought expedient) the ſurviving Feoffees, ſhall make a new Feoffment of the ſame Premiſſes, to the uſe of themſelves, and of ſo many more of the Pariſhioners of *T.* aforeſaid, as ſhall make it the number of fifteen; And that that order and rule ſhall be obſerved in all ſucceeding Generations; And the Commiſſioners aforeſaid, do further order, adjudge, and decree, that the Church-wardens of *T.* aforeſaid, for the time being, ſhall, upon Tueſday in the *Eaſter*-week, yearly give up true and perfect, accounts in Writing, to the Feoffees of the Premiſſes, or the major part of them, in the Pariſh-Church of *T.* aforeſaid, of their Receipts and Diſburſements of, touching, and concerning the Rents and Profits of the Premiſſes; And if it ſhall, upon ſuch account, appear that any Moneys are remaining in their hands, that then the ſaid Churchwardens ſo accounting, ſhall, within one month then next following, deliver and pay over the ſaid Monies ſo remaining in their hands, to the ſucceeding Churchwardens, to and for the *Charitable Uſe* before-mentioned: And foraſmuch as it appeareth unto the ſaid Commiſſioners, that the ſaid *T. H.* the Grandchild, hath in his cuſtody, an antient Deed or Writing, whereby the ſaid Meſſuages or Tenements, and Premiſſes were conveyed to the ſaid *A. B.* and his Heirs, and likewiſe the original Will of the ſaid *A. B.* whereby the Premiſſes are demiſed, limited, appointed, or aſſigned, to and for the *Charitable Uſe* before-mentioned: The ſaid Commiſſioners do further order, adjudge, and decree, That the ſaid *T. H.* ſhall, within one moneth after notice of this Decree, deliver unto the Church-wardens of *T.* aforeſaid, for the time being, the ſaid Deed and Will, and all other Deeds, Evidences, and Writings, touching and concerning the ſaid Meſſuages, Tenements, and Premiſſes, or any of them, which now are, or have been in his hands or cuſtody, or in the hands or cuſtody of any other perſon or perſons, to his uſe, or by his conſent or delivery, at any time, ſithence the death of the ſaid *E. H.* And laſtly, the ſaid Commiſſioners do further order, adjudge, and decree, that the ſaid *T. H.* the Grandchild, ſhall, within one month next after notice of this Decree, pay unto the Church-wardens of the ſaid Pariſh-Church of *T.* for the time being, the ſum of Twenty pounds of lawful Money of *England*, for the Rents and Profits of the ſaid Meſſuages, Tenements, and Premiſſes by him received, ſince the death of his ſaid Father *E. H.* which the ſaid Church-wardens are to imploy and beſtow in and about the repair of the ſaid Pariſh-Church, as need and occaſion ſhall be and require, In Witneſs whereof, the Commiſſioners aforeſaid, have hereunto ſet their Hands and Seals, the day and year above-written.

III.

Eſſex. AT *L. S.* in the County of *E.* aforeſaid. the laſt day of *M.* in the year of our Lord Chriſt 1659. Whereas, by an *Inquiſition* taken at *L. S.* aforeſaid, the 24 day of this inſtant *M.* before *W. C.* Serjeant at Law, *R. S.* Eſquire, *&c.* By vertue of a Commiſſion under the Great Seal of *England*, to them and others directed, for the due execution of a Statute made in the High Court of Parliament, holden the 27 day of *O.* in the 43 year of the Reign of the late Queen *E.* Entituled, *An Act to Redreſs the miſ-imployments of Lands, Goods, and Stocks of Money, heretofore given to* Charitable Uſes, by the Oaths of *J. A.* Gent. *R. B.* Eſquire, *&c* honeſt and lawful Men of the County aforeſaid; It is found, and doth appear, that *M. W.* Widow, deceaſed, long before her death, did hold to her and her Heirs of the then Lady of the Mannor of *W.* in the ſaid County of *E.* by Coppy of Court-Roll, according to the cuſtom of the ſaid Mannor, all that Tenement, *&c.* as by the ſaid *Inquiſition* hereunto annexed may appear. Now we the ſaid *W. C. R. S. &c.* Having firſt called the ſaid *R. B.* being the party intereſſed in the Tenement and Premiſſes in the ſaid *Inquiſition* mentioned (who appeared before us by her Council, before the taking of the ſaid *Inquiſition*, and was fully heard touching the Premiſſes) and having examined and conſidered the matters and things, in and by the ſaid *Inquiſition* found, and thereby appearing, do (by vertue of the ſaid Statute and Commiſſion, and the Power and Authority to us thereby given) order, adjudge, and decree, that the ſaid *R. B.* her Executors and Adminiſtrators, ſhall, within one moneth next after notice of this Decree, Order, and Judgement, pay unto the Church wardens of the ſaid Pariſh of *W.* for the time being, the ſum of 20*l.* of lawful Money of *England*, for the arrearages of the ſaid yearly payment of 30*l. per annum*, ſo by her with-held and detained from the *Charitable Uſe* aforeſaid, to and for the relief of the poor people of *W.* aforeſaid: And alſo the ſum of 10*l.* more for damages for the detaining of the ſaid money, and for the Coſts and Charges of the Pariſhioners of *W.* aforeſaid, by them expended, and by the ſuing forth of the Commiſſion aforeſaid, and in the proſecution thereof: And in and about the obtaining of the ſaid *Inquiſition*, and this *Decree*. And we the ſaid *W. C. R. S. &c.* do further order, adjudge, and decree, that the ſaid *R. B.* her Heirs and Aſſigns, Owners and Proprietors of the Tenement and Premiſſes aforeſaid, all and every other perſon and perſons whatſoever, claiming by, from, or under the ſaid *M. W.* and *D. B.* deceaſed, or either of them, ſhall (from henceforth for ever hereafter out of the Rents, Iſſues and Profits of the ſaid Tenements and Premiſſes yearly, and every year) pay unto the Churchwardens of the Pariſh of *W.* aforeſaid, for the time, and from time to time being, the ſum of thirty pounds, of lawful Money of *England*, upon the Feaſt of the *Epiphany*, in every year, yearly for ever, to and for the relief of the Poor of W. aforeſaid, according to the true direction, appointment, intent and meaning of the ſaid *M. G.* the Donor thereof, *In Witneſs whereof*, &c.

IV. *Eſſex.*

IV.

Eſſex. AT *E.* in the ſaid County, upon the twentieth day of *November*, in the Fourteenth year of the Reign of Our Soveraign Lord *Charles*, by the Grace of God, King of *England*, *Scotland*, *France*, and *Ireland*, Defender of the Faith, *&c.* Whereas, by an Inquiſition indented, taken at *E.* aforeſaid, the 21 day of *September* laſt paſt, before *Thomas Winniff*, Dean of *St. Pauls* Church, *London*, &c. By vertue of His Majeſties Commiſſion under the Great Seal of *England*, bearing date the ſixth day of *March*, in the thirteenth year of his ſaid Highneſs Reign, directed to the Right Reverend Father in God, the Lord Biſhop of *London*, *&c.* Authorizing them, or any four or more of them, for enquiring and reformation of Deceits, and Breaches of Truſt, concerning Lands, Tenements, and other things, given, limited, and appointed, to any the *Charitable Uſes*, named in the ſaid Commiſſion within the ſaid County, according to a Statute of the 43 year of the Reign of the late Q. *Elizabeth*, in ſuch Caſes made and provided by the Oaths, &c. It was found, that *H. L.* late of *W.* in the ſaid County of *Eſſex*, deceaſed, did in his life-time (amongſt other things) purchaſe of one *N. S.* a certain cuſtomary Meſſuage or Tenement, with the Appurtenances in *W.* aforeſaid, late in the Tenure or Occupation of one *J. E.* Gent. and holden of the Lord of the ſaid Mannor by Copy of Court-Roll, according to the cuſtom of the ſaid Mannor. And he the ſaid *H. L.* took ſurrender thereof in the names of his Sons, *H. L.* and *J. L.* being then Infants of tender years; and afterwards, during his life, did take and receive, the Rents, Iſſues, and Profits of the ſaid Meſſuage or Tenement, with the Appurtenances to his own proper uſe and behoof: And that the ſaid *H. L.* having purchaſed the ſaid Meſſuage or Tenement, with the Appurtenances (amongſt other things) as aforeſaid, he the ſaid *H. L.* did make his laſt Will and Teſtament in Writing, bearing date the 28 day of *November*, 1619. And by the ſame his laſt Will and Teſtament, did limit and appoint one yearly Rent of 40 *s.* to be iſſuing and payable yearly, for ever, out of the Meſſuage or Tenement in *W.* aforeſaid, then in the Tenure of the ſaid *M. S.* or his Aſſigns, to be diſtributed amongſt the poor people of the Pariſh of *W.* aforeſaid, from time to time aforeſaid for ever, in manner and form following, *viz. Item*, I give and bequeath unto *W. M.* Kt. *J. W.* Clerk, the now Parſon of *W. H. H.* Merchant, *J. W.* Gent. and *E. P.* Merchant, and their Heirs for ever, for the relief of the Poor of the ſaid Pariſh, one yearly Rent of 40 *s.* to be iſſuing and payable yearly for ever, out of my Meſſuage or Tenement in *W.* with the Appurtenances, now in the Tenure of *M. S.* or his Aſſigns, to be paid at the Feaſt of the Birth of our Lord God in every year, and to be diſtributed to and amongſt the poor people of the Pariſh of *W.* from time to time, for ever, by diſcretion of the chief Inhabitants, and the Parſon, and the Church-Wardens of the ſaid Pariſh for the time being for ever. And if it ſhall happen the ſaid Rent, or any part thereof to be behind or unpaid at the ſaid Feaſt, that then it ſhall be lawful for the ſaid *W. M. J. W. H. H. J. W.* and *E. P.* their Heirs or Aſſigns, to enter into the ſaid Meſſuage, diſtrain for the ſame,

and

and for the Arrearages thereof, if any ſhall be behind and unpaid. And whereas it was further found by the ſaid *Inquiſition*, that the ſaid *H. L.* in or about the moneth of *January* in the ſaid year of our Lord God, 1619. died: and that the ſaid *H. L.* his Son died alſo in the life-time of him the ſaid *H.* And that the ſaid *J. L.* now Sir *J. L.* Kt. them ſurvived, and being ſeized of the ſaid Meſſuage or Tenement, with the Appurtenances; amongſt other things, the ſaid Sir *W. M.* Kt. in the ſaid Will named, being one of the Deviſees of the ſaid Rent, and truſted by the ſaid Will, to ſee the ſaid *Charitable Uſe* performed, and having notice of the ſaid *Charitable Uſe*, did, in or about the month of *November*, in the year of our Lord God 1633. purchaſe the ſaid Meſſuage or Tenement, with the Appurtenances, amongſt other things, of the ſaid Sir *J. L.* and that thereupon the ſaid Sir *J. L.* in or about the month of *November*, in the ſaid year 1933. did ſurrender the ſaid Meſſuage or Tenement; amongſt other things, into the hands of the Lord of the ſaid Mannor of *W.* to the uſe of the ſaid *W. M.* Kt. his Heirs and Aſſigns for ever; and that the ſaid Sir *W. M.* at a Court holden for the ſaid Mannor the 10 day of *December*, in the year of our Lord God, 1633. was admitted Tenant to the ſaid Meſſuage or Tenement, with the Appurtenances accordingly. And that the ſaid *W. M.* Kt. continued ſeized of the ſaid Meſſuage or Tenement, amongſt other things, until about the month of *June* laſt; at which time, he the ſaid *W. M.* for a valuable conſideration of Money did ſurrender the ſaid Meſſuage or Tenement, with the Appurtenances, amongſt other things, into the hands of the Lord of the ſaid Mannor of *W.* to the uſe of *H. P.* Eſquire, his Heirs and Aſſigns for ever, according to the cuſtom of the ſaid Mannor; and that the ſaid *H. P.* at a Court holden for the ſaid Mannor, on or about the 21 day of *June* laſt, was admitted Tenant to the ſaid Meſſuage or Tenement, with the Appurtenances, amongſt other things accordingly: And that before the time, that he the ſaid *H. P.* was admitted Tenant to the ſame, as aforeſaid, he having the ſum of 1000 *l.* or more of the ſaid Purchaſe-money remaining in his hands unpaid, had notice of the ſaid *Deviſe* and *Charitable Uſe*. And laſtly, that the ſaid yearly Rent of 40 *s.* nor any part thereof, hath not been as yet at any time diſtributed unto, and among the poor People of the Pariſh of *W.* aforeſaid, according to the Will of the ſaid Sir *H. L.* but hath remained in arrear and unpaid to the Pariſhioners, by the Occupyers of the ſaid Land, ever ſince the death of the ſaid Sir *H. L. viz.* for the ſpace of theſe 18 years laſt paſt, contrary to the true intent and meaning of the ſaid Will, as by the ſaid *Inquiſition* hereunto annexed, more at large it doth and may appear. Now the ſaid *T. W. E. L. N. W. J. H. W. C. D. D.* and *D. T.* for reformation of the ſaid abuſe, neglect, and breach of Truſt, do hereby order, adjudge, and decree, in manner and form following; that is to ſay, That he the ſaid *H. P.* now owner of the ſaid Meſſuage or Tenement, and Land charged with the ſaid Rent, his Heirs, Executors, Adminiſtrators and Aſſigns, ſhall pay, or cauſe to be paid unto the ſaid *J. W.* and the now Churchwardens of the ſaid Pariſh of *W.* or one of them, the ſum of 38 *l.* of lawful Money of *England*, within 8 days after Proceſs ſhall be ſerved upon the ſaid *H. P.* his Heirs, Executors, Adminiſtrators, and Aſſigns, at, or in the ſaid Parſonage Houſe of *W.* aforeſaid, for the Arrearages of the ſaid yearly Rent, or ſum of 40 *s.* limited and appointed

by

by the ſaid Sir *H. L.* in and by his ſaid Will, to be iſſuing and paid out of the ſaid Meſſuage or Tenement, with the Appurtenances, to the *Charitable Uſe* above expreſſed: And that the ſaid ſum of 38 *l.* ſhall be diſtributed by them the ſaid *J. W.* and the ſaid Churchwardens of the ſame Pariſh, unto and amongſt the poor People of *W.* aforeſaid, according to the Will of the ſaid Sir *H. L.* And that the ſaid *H. P.* his Heirs, Executors, Adminiſtrators, and Aſſigns, ſhall alſo pay unto them the ſaid *J. W.* and the ſaid Churchwardens of *W.* the ſum of 10 *l.* of lawful Money of *England*, towards the Charges laid out in the ſuing forth of the ſaid Commiſſion, and in proſecuting of the ſaid *Inquiſition*, and this *Decree*. And the ſaid *T. W.* &c. do further order, adjudge, and decree, that the ſaid Sir *W. M.* Knight, and *J. W.* being the ſurviving Deviſees of the ſaid Rent of Forty ſhillings *per annum*, limited and appointed to be paid out of the ſaid Meſſuage or Tenement, to, and for, the *Charitable Uſe* above-mentioned, ſhall, at or before the ſaid Feaſt of the *Annunciation* of our Bleſſed Lady the Virgin *Mary*, next enſuing, by their Deed or Writing, in due form of Law to be made, grant, convey, aſſign, or ſet over the ſaid Rent of 40 s. limited and appointed by the ſaid Will of the ſaid Sir *H. L.* to be for ever, paid out of the ſaid Meſſuage or Tenement, with the Appurtenances in *W.* aforeſaid, to and for the *Charitable Uſe* before expreſſed, unto Sir *H. H* Knight. *W. J.* Doctor in Divinity, Rector of the Pariſh Church of *W.* aforeſaid, *E. W. W. B. T. M.* and *D. T.* Eſquires, their Heirs and Aſſigns, in as large, ample, and beneficial manner and form, to all intents and purpoſes whatſoever, as the ſame is granted, demiſed, or bequeathed unto them the ſaid Sir *W. M.* Kt. *J. W.* Clerk, *H. H. J. W.* and *E. P.* and their Heirs, in and by the Willl of the ſaid Sir *H. L.* to the end, intent and purpoſe, the ſaid Sir *H. H. W. J. B. W. W. B.* and *D. T.* their Heirs and Aſſigns, may be enabled to demand and receive the ſaid yearly Rent of Forty ſhillings, of and from the Owners and Ocupiers of the ſaid Meſſuage or Tenement, for ever, at the Feaſt of the Birth of our Lord God. And that the ſame may be diſtributed unto and amongſt the poor people of the ſaid Pariſh of *W.* aforeſaid, from time to time, for ever, by the diſcretions of the ſaid chief Inhabitants and the Parſon, and the ſaid Churchwardens of the ſaid Pariſh for the time being, for ever, where moſt need ſhall be, according to the true intent and meaning of the ſaid Sir *H. L.* in his ſaid Will expreſſed. And the ſaid *T. W. E. L. N. W. J. H. W. C. D. D.* and *D. T.* do further, order, adjudge, and decree, that as ſoon as any four of them, the ſaid Sir *H. H. W. J. B. W. W. B. T. M.* and *D. T.* ſhall depart this life, that then the ſaid two ſurviving Aſſigns of the ſaid yearly Rent, of 40 *s.* ſhall, by ſome Writing, under their Hands and Seals, in due form of Law to be made, aſſign, and ſet over the ſaid yearly Rent of 40 *s.* limited and appointed by the ſaid Sir *H. L.* to and for the *Charitable Uſe* above-mentioned, unto two other perſons by them the ſaid ſurviving Aſſigns to be nominated, and their Heirs, upon condition, that they the ſaid two perſons ſo to be nominated by them the ſaid ſurviving Aſſigns, as aforeſaid, immediately after the ſaid Rent ſhall by ſuch Act and Deed be veſted and ſetled in them, ſhall re-aſſign and ſet over the ſaid yearly Rent of 40 *s.* unto them the ſaid ſurviving Aſſigns: And alſo to four or more other perſons of the beſt quality then living in *W.* aforeſaid, their

Heirs

Heirs and Aſſigns for ever in Truſt, to and for the performance of the *Charitable Uſe* above-mentioned; And that, from time to time, as often as any four of the Aſſigns of the ſaid Rent ſhall depart this life, that then the ſurviving Aſſigns of the ſaid Rent, ſhall make ſuch new Aſſignments, of the ſaid yearly Rent of 40 *s.* as are above expreſſed and mentioned. *In witneſs, &c.*

The certain and ſure way of making Decrees, is ſtrictly to obſerve and purſue the Will and Intent of the Donor.

The return of the Commiſſion to be written upon the back thereof.

The Execution of this Commiſſion appeareth in ſeveral Schedules to the ſame Commiſſion annexed.

Four Commiſſioners or more; *A. B. C. D. E. F. G. H.*

DECREES.

5 *Caroli primi Rotulo primo.*

TWenty pounds *per annum* given to a *Schoolmaſter* and Uſher (*viz.*) 13. *l.* 6 *s.* 8 *d.* to the *Schoolmaſter*, and 6 *l.* 13 *s.* 4 *d.* to the Uſher. And decreed, That the *Schoolmaſter* ſhould have the whole 20 *l.*

Eodem Rotulo. Chipping Sudbury in *Com. Glouc:*

Glouc. THe Proſecutors Charges were allowed out of the Money decreed, and the ſurpluſage above the Uſes, particularly appointed by the Donor, were decreed by the then Lord Keeper, to be diſpoſed of to other *Charitable Uſes.*

Rippon and *Thornton, Rotulo predicto.*

Ebor. A Decree made by Commiſſioners for *Charitable Uſes* for Lands given to a Miniſter for Reading Divine Service confirmed by the then Lord Keeper.

Barnſtaple, in *Com. Devon. Rotulo primo.*

Devon. THe Lord Keeper enlarged a Decree made by Commiſſioners of *Charitable Uſes*, whereby 85 *l.* only was decreed, and his Lordſhip made it up 170 *l.* and Decreed accordingly.

Elmely

Elmeley Lovett in Com. *Suſſex.*

LAnds given by ſeveral perſons to a Pariſh, for the uſe of the Poor, repair of the Church, and other Charitable Uſes, to be done in the Pariſh, Decreed and Confirmed. *Suſſex.*

Brattlington in *Suſſex.*

AN inſcription upon the Donors Tombſtone, declaring the Donors Gift to a *Charitable Uſe*, was found *in hac verba.* And a Decree thereupon accordingly; and is a very good preſident. *Suſſex.*

Mich. 2. *C.* 1. *John Crouch* againſt the Citizens of *Worceſter.*

Thomas Wild gave Lands to the Bayliff, Aldermen, and Citizens of *Worceſter*, to erect a School, which they did accordingly; *Crouch* obtained a Leaſe of ſome part of the School-Land, from the Governors of the School: One *Cloſer* got another Leaſe of other Lands; and others got other Leaſes of other Lands; and by *Inquiſition*, the ſaid Leaſes were found; and that the Leſſees had acquired much above the Rents reſerved; and that the ſaid Leaſes were made at under values, and for too long Terms. And the Commiſſioners Decreed all thoſe Leaſes void, and to be delivered up; and the then Lord Keeper confirmed the Decree. *Worceſt.* *Decree by Commiſſioners.* *Confirmed.*

3 *Jac. Croucher* againſt the Citizens of

IT appeared to Commiſſioners (*inter alia.*) That two Meadows, in the Tenure of *Elizabeth Brown*, and a Meadow in the Tenure of *John Croucher*, were long ſince, by certain perſons, owners thereof, Given, Limited, and Appointed to repair a Bridge and Cauſeway, repair a Church, and relieve Poor; and that theſe Meadows, with a Tenement, &c. were worth 8 *l. per annum.* And that *Thomas Brown*, who in 4, and 5. *P.* and *M.* obtained the intereſt of a Leaſe thereof, in 5 *H.* 8. for 61 years, did get of the Feoffees of the Premiſſes, a Leaſe for 99 years of the Premiſſes, and 34 *s.* Rent, and 4 *l.* Fine. And that the Rent did not repair the Bridge and Lane, and ſo no benefit was like to come to the Church or Poor. Whereupon 3 *Jac.* Commiſſioners Decree with the conſent of *Croucher*, and upon an *Inquiſition*, That from that Decree, for the reſidue of the 99 years, the Rent ſhould be increaſed, (*viz.*) *Elizabeth Brown* ſhould pay 53 *s. per ann.* and *Croucher* 5 *s.* in all 58 *s. per ann.* and ſo the Leaſe for 99 years ſhould ſtand. *Decree by Commiſſioners.*

His Majeſties Attorney-General by Information, Plaintiff;
Townſend & alios, *Defendants.*

Richard Riſley Seized in Fee of a Farm in *V.* in the County of *H.* 20 *Sept.* 1 *Mariæ*, Demiſes the ſame to *J. R.* for 96 years paying to him during his life, 7 *l. per ann.* and after his deceaſe, 6 *l.* 10 *s. per ann, viz.* 3 *l.* 10 *s.* to the Maſter and Fellows of *Chriſts Colledge* in *Camb.* for the maintainance of a poor Scholar there; 40 *s.* to the Miniſter, Conſtable, and Churchwardens of *S.* and 20 *l. per ann.* to the Overſeers of the Poor of *B.* for the relief of the Poor. *R. R.* conveyed the Inheritance to Truſtees, upon Truſt, That after the expiration of the Leaſe of 96 years, they ſhould apply all the Rents, *&c.* for the relief of a poor Scholar in *Chriſts Colledge*, and the relief of the Poor of *S.* and *B.* The Leaſe ended in 1649. The Scholar and Poor had only 6 *l.* 10 *s. per ann.* till about 1670, And

Upon an Information in *Chancery* by His Majeſties then Attorney-General, at the Relation of the Maſter and Fellows of the ſaid Colledge. It was Decreed, That the whole 30 *l. per ann.* ſhould be paid to the Scholar and Poor, according to their ſeveral proportions of the 6 *l.* 10 *s. per ann.*

Note. Where the Deviſor gives all the Eſtate, or the Surpluſage of his Eſtate to the Poor, there the proper way to have the ſame applyed to *Charitable Uſes*, is by Information in *Chancery.*

Exceptions to a DECREE.

Exceptions taken by T. H. Gent. *to a Decree, made at* R. *in the County of* D. *on Tueſday the ninth day of* September, *in the year of our Lord*, 1645. *made by* W. C. J. H. C. M. *and* G. M. *Commiſſioners, appointed and authorized by a Commiſſion under the Great Seal of* England, *bearing date the eighth day of* February, 1643. *directed to the ſaid Commiſſioners, and to divers other perſons in the County of* D. *grounded upon the Statute, made in the 43 year of the Reign of the late Queen* Elizabeth, *Entituled*, An Act made to redreſs miſ-imployments of Lands, Goods, and Stocks of Money, given to *Charitable Uſes, as followeth.*

WHereas it is ſet forth by the ſaid Decree, That one *A. B.* by his Will in Writing, bearing date the 17 day of *January*, 1524. did Deviſe and Bequeath a Meſſuage or Tenement, with certain Houſes, and a Garden thereunto belonging, with the Appurtenances in *T.* in the ſaid County of *D.* commonly called or known by the name of *C.* to *A.* his Wife during her life, and after her deceaſe, unto the Church of *T.* aforeſaid, in theſe words following,

Item, *I Will, after my deceaſe, that* A. *my Wife, have my Houſe, called* C. *during her natural Life, and ſhe to keep up the reparations of the ſaid Houſe, and the*

the Lords Rent to pay, and ſhe to find four Tapers of four pounds of Wax; that is, one before the Rude under the Rude Loft, and another before our Lady; another before St. Thomas, *and one before* St. Anthony. Item, *I Will, That ſhe keep mine* Obit *every year during her life, and to have every year three Prieſts, and they to have Eight pence a piece, and two dozen of Bread, and a Kinderkin of double Beer, and two Cheeſes, price of Twenty pence.* Item, *I Will, and appoint after my deceaſe, That all and ſingular my Evidences, and my Copies, that they be delivered into the cuſtody of the Churchwardens of the Pariſh of* Peter *and* Paul, *of* T. *aforeſaid.* Item, *I Will, That after the natural life of* A. *my Wife, that then my Houſe called* C. *with all the Appurtenances belonging thereunto, as is more plainly ſpecified by my Deeds; that it ſhall remain evermore unto the Church aforeſaid: Firſt, to keep mine* Obit *yearly, and the four Tapers of four pounds of Wax. Moreover, I Will, That after the deceaſe of* A. *my Wife, that the Churchwardens do buy ſix pounds of Wax, and make the common Light, and the Taper before the Rude, to the full of two pounds of Wax apiece, and ſo to continue for evermore, and the reſidue of the Rent to remain to the reparations of the Church aforeſaid.*

And whereas it is ſet forth by the ſaid Decree, That the ſaid *A* and *B.* and *A. B.* are long ſince dead, and that *T. H.* Eſquire, deceaſed, on, or about the ſix and twentieth day of *January*, in the thirtieth year of the Reign of the late Queen *Elizabeth*, did enter into the ſaid Meſſuage and Premiſſes, called *C.* and was poſſeſſed thereof, and during his life, took the Rents and Profits thereof, paying only five Nobles *per ann.* out of the Rents and Profits of the ſame Meſſuage and Premiſſes, to the Churchwardens and Church of *T.* to the *Charitable Uſe* aforeſaid; and that *E. H.* Eſquire, deceaſed, Son of the ſaid *T.* alſo entred upon the Premiſſes, and paid the five Nobles a year as aboveſaid, until about twelve years laſt paſt, at which time the ſaid *E. H.* refuſed to pay it; and that the ſame Premiſſes is now divided into ſeveral Tenements; and that ſince the death of the ſaid *E. H.* who died about two years before the Decree: the ſaid Exceptant, *T. H.* Son and Heir of the ſaid *E. H.* came to the ſaid Meſſuage and Premiſſes, called *C.* as Son and Heir to the ſaid *E. H.* And the ſaid Commiſſioners have ordered, That the ſaid Exceptant *T. H.* and his Tenants, ſhould ſurrender and yield up the Poſſeſſion of the ſaid Meſſuage and Premiſſes, unto the Churchwardens of *T.* aforeſaid, and to deliver up the Deeds and Evidences of the ſame Premiſſes, and to pay unto the ſaid Churchwardens, the ſum of Twenty pounds, to be imployed for the repairs of the ſaid Church. Unto which Decree this Exceptant, *T. H.* doth except, and conceives, and is adviſed by his Counſel, That he is not, nor ought to be bound by the ſaid Decree and Order, made by the ſaid Commiſſioners as aforeſaid, for the Cauſes and Reaſons hereafter following.

And firſt, For that it appeareth by antient Deed of Feoffment, bearing date the two and twentieth day of *June*, in the tenth year of the Reign of the late King *Henry* the VIII. that one *J. K.* and *F.* his wife, *W. F. W. T. F. S.* and *R. M.* did grant and confirm unto the before-named *A. B. R. F. R. F.* and *F. R.* to the uſe of the ſaid *A. B.* and his Heirs and Aſſigns for ever, all that the Meſſuage, with the Buildings, Gardens, and Appurtenances, called *C.* ſcituate, lying, and being in *T.* in the County of *D.* between, *&c.* as by the ſaid Deed of Feoffment ready to be produced, may appear: Which ſaid laſt mentioned Meſſuage and Premiſſes, called *C.*

is not the Meſſuage, Lands and Premiſſes in the occupation of this Exceptant and his Tenants, and which are charged and decreed to the *Charitable Uſe* by the ſaid Commiſſioners, as aforeſaid: For this Exceptant ſaith, That the aforeſaid Meſſuage or Tenement, called *C.* ſo conveyed by the laſt mentioned Deed of Feoffment to *A. B.* as aforeſaid, was held of the Mannor of *G.* in the ſaid County of *D.* by Fealty, Suit of Court, and the yearly Rent of two ſhillings eight pence *per ann.* as by the Surveys and Records of the ſaid Mannor may appear; which ſaid Meſſuage and Premiſſes, afterwards came to be the Inheritance of one *R. E.* and was then called by the name of *C.* otherwiſe *E.* Hall. And this Exceptant further ſaith, That the ſaid *R. E.* being ſeized in Fee of the ſaid Meſſuage and Premiſſes. did upon, or about the twelfth day of *November*, in the eighth year of the Reign of the late Queen *Elizabeth*, acknowledge a Statute of one hundred and fifty pounds unto one *T. O.* for the payment of the ſum of one hundred and ſixteen pounds, at a day ſhortly after, which was not paid; which Statute was extended about the tenth day of *April*, in the fourteenth year of the Reign of the ſaid late Queen *Elizabeth*, upon the ſaid Meſſuage and Premiſſes, which was afterwards aſſigned over unto *T. H.* this Exceptant's Grandfather, upon, or about the five and twentieth day of *January*, in the 14 year of the Reign of the ſaid late Queen *Elizabeth*. And it appeareth by the ſaid Extent, that the ſaid *R. E.* had ſold the ſaid Meſſuage and Premiſſes, unto one *S. F.* and his Heirs by Deed, bearing date, upon, or about the 20 day of *June*, in the twentieth year of the Reign of the ſaid late Queen *Elizabeth*: And this Exceptant ſaith, That the ſaid *T. H.* this Exceptant's Grandfather, having the ſaid Premiſſes ſo in Extent, and the ſame being but of ſmall value, and the Money that was owing thereupon, being more worth then the ſaid Meſſuage and Premiſſes, he did by his Deed, bearing date upon, or about the five and twentieth day of *January*, in the thirteenth year of the Reign of the late Queen *Elizabeth*, grant to ſeveral Truſtees, one Annuity or yearly Rent of Forty ſix ſhillings eight pence, to be iſſuing and going out of the ſaid Meſſuage, called *C.* to be imployed for the repairs of the Pariſh Church of *T.* aforeſaid, which ſaid ſum of Forty ſix ſhillings and eight pence, is the ſeven Nobles mentioned in the ſaid Decree. And this Exceptant ſaith, That when the ſaid Extent is ended, the Inheritance of the ſaid Meſſuage and Premiſſes will come unto *T. F.* Son and Heir of *S. F.* deceaſed, as by an Office, after the deceaſe of the ſaid *S. F.* found at *L.* the three and twentieth day of *November*, in the four and fortieth year of the Reign of the late Queen *Elizabeth* may appear: which ſaid Meſſuage and Premiſſes laſt before-mentioned, if any at all, ought only to be charged with the ſaid *Charitable Uſe*, and none other.

The ſecond Exception.

And ſecondly, this Exceptant ſaith, That the Meſſuage and Premiſſes in the Decree, mentioned to be in this Exceptant's Occupation, and the other Meſſuages and Premiſſes therein mentioned, to be in the occupation of him, this Exceptant and his Tenants, are not the Meſſuages and Lands given to the ſaid *Charitable Uſe*, nor ought not to be charged therewith; for this Exceptant ſaith, That the late King *Edward* the VI. by his Letters Patents under the Great Seal of *England*, bearing date the tenth day of *April*, in the third

third year of his Reign, did amongſt other things, give and grant unto one *R. W.* and *W. P.* and their Heirs, all that his Meſſuage or Tenement called *C.* and all Lands, Meadows, Paſtures, Feedings, and Hereditaments whatſoever thereunto belonging, then, or late in the Occupation of *N. P.* to hold of the ſaid King, as of his Mannor of *C.* in the County of *D.* in Fee-Socage, and not in *Capite*, for all Rents, Services and Demands whatſoever. And this Exceptant ſaith, That the ſaid Meſſuage, called *C. alias E.* Hall, charged and given to the ſaid *Charitable Uſe*, is held of the ſaid Mannor of *G.* by Fealty, Suit of Court, and the yearly Rent of Two ſhillings and eight pence, as is herein before-mentioned, and therefore the ſame is differenced, and plainly diſtinguiſhed from the ſaid Meſſuage and Premiſſes called *C.* in the poſſeſſion of this Exceptant and his Tenants. And this Exceptant further ſaith, That afterwards, that is to ſay, the nine and twentieth day of *April*, in the third year of the Reign of the ſaid late King *Edward* the VI. the ſaid *R. W.* and *W. P.* did, by Deed of Feoffment, and by other Conveyances and Aſſurance in the Law, Convey and Aſſure the aforeſaid laſt mentioned Meſſuage, called *C.* (amongſt other things) to *W. C.* and *J. W.* and their Heirs, and afterwards *G. C.* Son and Heir of the ſaid *W. C.* who had the ſaid laſt mentioned Meſſuage, called *C.* by Survivorſhip, did by his Indenture of Bargain and Sale, inrolled in *Chancery*, dated the thirteenth day of *October*, in the twelfth year of the late Queen *Elizabeth*, bargain, and ſell the ſaid laſt mentioned Meſſuage, called *C.* amongſt other things, to *W. L.* and his Heirs, and afterwards the ſaid *W.* did, by his Deed indented, inrolled in *Chancery*, dated the tenth of *July*, in the thirteenth year of the Reign of the late Queen *Elizabeth*, Convey, and Aſſure the ſaid laſt mentioned Meſſuage, called *C.* unto *T. H.* and his Heirs, which ſaid *T. H.* was Grandfather of this Exceptant, and the ſame is by deſcent, and other good Conveyance and Aſſurance in the Law, lawfully veſted, and come unto this Exceptant, and he now is lawfully ſeized thereof, and ought to hold and enjoy the ſame, free from the ſaid *Charitable Uſe*.

The third Exception.

And thirdly, This Exceptant ſaith, that the ſaid *T. H.* his Grandfather, at the time of his purchaſe of the ſaid laſt mentioned Meſſuage, called *C.* had no notice of the ſaid *Charitable Uſe*, and if the ſaid Meſſuage were charged, or chargeable therewith, or liable thereunto, as in truth it is not, yet ought the ſame not to be charged therewith; For that by the ſaid Statute made in the 43 year of the Reign of the late Queen *Elizabeth*, made for *Charitable Uſes*, it is provided and ordained, That no Lands, Tenements, or Hereditaments, given or appointed to any *Charitable Uſes*, ſhall be impeached by any Decrees or Orders of Commiſſioners for *Charitable Uſes*, the Purchaſors having no notice of the ſaid *Charitable Uſes*.

The fourth Exception.

And fourthly, this Exceptant ſaith, That if it were true, as in truth it is not, that the ſaid laſt mentioned Meſſuages, called *C.* were charged, or chargeable with the ſaid *Charitable Uſe*; yet ought not the ſaid Order or Decree, made by the ſaid Commiſſioners, any ways to impeach or charge the ſaid Meſſuage or Premiſſes, with the ſaid *Charitable Uſe*, or any ways to deprive this Exceptant thereof; for that by the ſaid Statute, made in the 43 year of the Reign of the late Queen *Elizabeth*. It is Enacted, that the ſaid Act for *Charitable Uſes* ſhall not extend to give Power and Authority to any Commiſſioners for *Charitable Uſes*, to make any Order, Judgement, or Decrees, for, or concerning any Mannors, Lands, Tenements, or other Hereditaments, Aſſured, Conveyed, Granted, or come unto the Queens Majeſty, the late King *Henry* the VIII. King *Edward* the VI. or Queen *Mary*, by Act of Parliament, Surrender, Exchange, Relinquiſhment, Eſcheat, Attainder, Conveyance, or otherwiſe. And foraſmuch as it appeareth, that the ſaid Meſſuage and Premiſſes laſt before-mentioned, called *C.* was by the ſaid late King *Edward* the VI. by his Letters, Patents, dated the 8 day of *April*, in the third year of his Reign, Granted (amongſt other things) unto the ſaid *R. W.* and *W. P.* and their Heirs, as is herein before-mentioned: And therefore, if the ſame had been any ways given to the ſaid *Charitable Uſe*, as in truth it was not, yet ought the ſame now to be free from the ſame, by force and vertue of the ſaid Act of Parliament.

The fifth Exception.

And fifthly, This Exceptant ſaith, That the ſaid Commiſſion, grounded upon the ſaid Statute, to the ſaid Commiſſioners directed, in purſuance whereof, they made their Decree, is not returned into this Honourable Court, into the Office of the *Petty-Bag*, as it ought to be; for all which Cauſes, this Exceptant doth humbly pray the ſaid Order and Decree may be reverſed and made void, and his ſaid Meſſuage and Premiſſes may be freed from the ſame; And that this Exceptant may be diſmiſſed with his reaſonable Coſts and Charges in this behalf wrongfully ſuſtained.

Anſwers to Exceptions.

The Anſwer of J. L. *and* S. W. *Churchwardens of* G. T. *in the County of* D. *Reſpondents to the Exceptions of* T. H. *Gent. by him taken, to the Decree in the ſaid Exceptions mentioned.*

WHereas the ſaid Exceptant doth Except to, and againſt the ſaid Decree, for that the Meſſuage or Tenement, called *C.* given by the Will of *A. B.* therein named, to the *Charitable Uſe* therein ſpecified, are not the Meſſuage, Tenement and Lands in the Occupation of the ſaid Exceptant and his Tenants, and which are charged and decreed to the ſaid *Charitable Uſe*: And alſo, for that the Exceptants Grandfather *T. H.* therein

in named, had at the time of his purchaſe of the Premiſſes, in the occupation of him and his Tenants, no notice of the ſaid *Charitable Uſe*; and that the ſaid Premiſſes were heretofore conveyed by Letters Patents, from King *Edward* the VI. And laſtly, for that the Commiſſion, directed to the Commiſſioners in the ſaid Decree named, wherein they made the ſaid Decree, was not returned into this Court, at the time of the ſaid Exception, unto which Exceptions, theſe Reſpondents ſaving unto themſelves, all advantages of Exception, to the incertainties and inſufficiencies thereof, ſay, That they are upon the matter, ſtrangers to the matters, ſet forth by the ſaid Exceptions, having not lived very long in the Pariſh, and being no otherwiſe concerned, then as Churchwardens thereof; and it cannot be preſumed, they ſhould know the Facts and Titles alledged by the ſaid Exceptions of their own knowledge. But they ſay, that the ſaid Exceptant was ſeveral times ſummoned and heard before the Commiſſioners that made the ſaid Decree, and the Jury by them impannelled; And he brought his Learned Counſel with him, who urged before the ſaid Jury and Commiſſioners, who were Learned in the Law, and good and honeſt Men, before their Verdict given, or Decree made, the ſubſtance and matter of the ſaid Exception, and whatever could be alledged againſt the Decreeing of the Premiſſes, and the ſame Decree was made upon a full hearing of both ſides. And one of the main points inſiſted on before the ſaid Jury and Commiſſioners, was the matter of the aforeſaid firſt two Exceptions, whether the Premiſſes decreed to be charged with the *Charitable Uſe*, were the Meſſuage, Tenement, and Lands given by the ſaid Will, yea or no, it being a proper iſſue for a Jury of parcel, or no parcel, the ſame Premiſſes in the occupation of the Exceptant, were after a full and deliberate hearing and evidence on both ſides, found by the ſaid Jury to be the ſame Tenements and Lands, deviſed by the ſaid Will. And the matter of the ſaid two next Exceptions, Whether the ſaid Exceptants Grandfather had notice of the *Charitable Uſe* before, or at his Purchaſe of the Premiſſes, or that the Premiſſes were in the *Crown*, yea, or no, being alſo proper for a Jury, were likewiſe upon the like Evidence then given, found by the ſaid Jury for the ſaid Pariſh, againſt the Exceptant. And theſe Reſpondents verily believe, the ſaid Exceptant cannot but be ſatisfied with the ſaid Verdict and Decree, and doth trouble theſe Reſpondents and the ſaid Pariſh, onely to drive them to ſome compoſition, or low terms of agreement: And in particular, theſe Reſpondents ſay, That they doubt not to make it appear by ſeveral particulars, and parcels of Evidences and Pleadings, and Proofs in ſeveral Courts, (if this Honourable Court ſhould now think fit to put them thereunto, after the ſaid Deliberation and Verdict) that the Premiſſes charged with the ſaid *Charitable Uſe*, are the ſame that were charged and deviſed by the ſaid Will, and that the Purchaſor (if he was one) had, and could not but have, and take notice before, and at the time of his Purchaſe: And likewiſe ſay, That the ſaid King *Edward* the VI. or his Father, *Henry* the VIII. Queeen *Mary*, or Queen *Elizabeth*, or either of them, were not at any time ſeized, or intituled to be ſeized of the Premiſſes, or any part thereof; and if the ſaid King *Edw.* the VI. made ſuch Grant as aforeſaid, the ſame was not of theſe ſelf-ſame Premiſſes, but of other Tenements; and if it were, the ſaid King had no Seiſin, or Inheritance of, or in the ſaid Lands, or right, ſo to grant the ſame, nor doth the ſaid Grant, if any ſuch be, prejudice the *Charitable Uſe*, as the

the Reſpondents are adviſed. And theſe Reſpondents further ſay, That they are informed, the ſaid Commiſſion is returned into this Court, and there remain of Record: Wherefore theſe Reſpondents humbly pray the ſaid Decree may ſtand ratified and confirmed, and the ſaid Decree and *Charitable Uſe* may be performed, and theſe Reſpondents diſcharged with their Coſts in this behalf, moſt wrongfully ſuſtained.

Anſwers and Exception to Decrees.

17 Jacobi. William Blomefield, *and the Inhabitants of* Stowe-Market.

Suſſex. *The Caſe.* *William Seamour* ſeized in Fee of divers Meſſuages, *&c.* in *Stowe-Market*, by his Deed, dated the tenth of *October*, 10 *H.* 8. did Enfeoffe *Margaret Stowe*, and divers others of the Premiſſes, to the uſe of the ſaid *Margaret*, for life; and after to perform her Will: and *Margaret* by her Will, dated the firſt of *July* 1523. did give ſeveral of her Lands to the uſe of the Prieſts Service, in the Church of *St. Peter* in *Stowe-Market*, to pray for her Soul, and the Souls of her Husbands and others, for 99 years and the Lands to be ſold by her Co-Feoffees, and the one half of the Money to go to the making of the High-way, between *Stowe* and *Ipſwich*; and the other to be divided, one part to a Prieſt, to ſay Prayers in the ſaid Church of *S. Peter*, for her Soul, and the Souls of the afore-rehearſed; and the other, for the reparation of the ſaid Church, *Margaret* dyed, and the 99 years by the Statute of Chauntreys, came to King *Edw.* the VI. who granted the reſidue of the 99 years, to *Edward Warner*. The 99 years expired the ſixth of *July* 1622. and 17 *Jacobi*, the Lands were worth 40 l. *per ann. de claro*. In 17 *Jacobi*, the Leaſe being unexpired, and all the Feoffees dead, and no Feoffment renewed; one *William Blomefield* claimed the Reverſion, as Cozen, and next Heir of *Margaret*, and endeavoured to obtain the term of 99 years; And the Jury found, that the claim and endeavour of *Blomefield*, was, and would be, to the defrauding and defeating of the ſaid *Charitable Uſe*, and intents of the Donor. That the Occupiers of the Land had done great waſte, and that *John Keeble* was Heir to the Feoffee, *John Keeble*, and *Robert Symonds* were Heirs of the Feoffee *Richard Symonds*, and that either *John Keeble* or *Robert Symonds*, the Feoffees, was ſurvivor of the Co-Feoffees, and were ready to execute the *Charitable Uſe*.

Exceptions, *Blomefield* excepted againſt the proceedings, and ſaid, There ought to be no Inquiry or Decree, until the 99 years were expired. (2) That by the words of the Will, the Lands could not be ſold till the 99 years ended, if any were then being, that had authority to ſell them. (3) That no ſale could be ever made, becauſe none of the Co-Feoffees were living. (4) That if ſale were to be made, or any act to be done in time, according to the Will, yet

yet all the Lands in the Will ought not at any time to be ſold or imployed to the ſaid *Charitable Uſes*, for that all were not given for the ſaid *Charitable Uſes*.

The Commiſſioners diſallowed the Exceptions, and found them to be a deſign to get the poſſeſſion, and to keep the Land, notwithſtanding he had notice of the *Charitable Uſes*; and the Commiſſioners conſidering, that it was not neceſſary to ſee the Lands for that the ſame were of ſuch yearly value, as that the Moyety would maintain the Highways, and the one halfe of the other Moyety, would ſerve for the maintainance of a Clerk, to Sing, and Celebrate Divine Service in the Church aforeſaid, and the reſt would ſuffice to repair the Church; The Commiſſioners thereupon Decree, That the ſaid *Blomefield*, and all claiming under him, and *Keeble* and *Symonds* ſhould execute ſuch reaſonable Conveyance of the Premiſſes to *John Howe* and *Richard Draper*, *&c.* as ſhould be reaſonably deviſed: And that after the expiration of the Leaſe, the now Feoffees and their Heirs, ſhould imploy the Premiſſes as aforeſaid. And that now Feoffees ſhould be made, *&c.* To this *Blomfield* put in Exceptions (1) That the Feoffees were all dead, and none enabled to make ſale, according to the Will. (2) That the Commiſſioners decreed the Heir of *Margaret*, to aſſure to the Uſes mentioned in the Decree, which were contrary to the Will, and not warranted by the Statute. (3) That becauſe there was not, nor could be, any miſ-imployment before the end of 99 years, nor before a miſ-imployment, the Decree was not in force to bind any part (4) That if *William Blomfield* did, at the end of the Leaſe, ſell the Lands, and imploy the ſame as the Will directed, then there was no miſimployment, or cauſe of a Decree againſt him, and ſo the Decree was void (5) That whereas *Blomfield* was decreed to aſſure all the Lands expreſſed in *Firbuſhers* Deed, to the Perſons and Uſes in the Decree expreſſed; The Exceptant ſaith, That divers Land in *Firbuſhers* Deed, were not deviſed, and ſets out the particulars, ſome being Freehold, and ſome Copyhold; and that he was admitted to the Copyhold, as Cozen and Heir of *Margaret*, and recovered by ſeveral Trya's.

The Reſpondents anſwer, (1) That the Decree was good againſt the Exceptant, for that all the Co-Feoffees were dead, and had neglected the Truſt in making a new Feoffment. (2) That the Exceptant being Heir of *Margaret*, ought by the Statute, to be decreed, to aſſure the Lands to the Uſes and Perſons, expreſſed in the Decree, and was well warranted by the Statute, and tended to the execution of the ſaid Will and and true intent of the ſaid *Margaret*, which otherwiſe ſhould be wholly defeated. (3) And that if the Exceptant ſhould have the Land, as Heir, the *Charitable Uſes* ſhould be defrauded. (4) That the Waſte and Spoil in pulling down of Houſes, digging the Ground, and cutting down of Trees, whereby the Land was impaired, and the practiſes of the Exceptant, utterly to defeat the Charity, were miſimployments, abuſes, and offences within the Letter of *Anſwer.*

the Statute, and provided againſt by the ſaid Statute. (5) That the ſuppoſition of the Exceptants ſelling the Land at the end of the Leaſe, to perform the Will, was ſuch a ſuppoſal, as could not overthrow the Decree. And if he were ſo well minded, yet the Waſtes and Spoils were miſ-imployments within the Statute, and good cauſe of the Decree, preſently before the Term was ended; and averr the Land to be the ſame deviſed.

Reply. To which the Exceptant replyed, That the Decree as to the part decreed, to maintain the Clerk, was repugnant to the Will, and void, and the ſervice in the Will could not be performed, and ſo a fourth part would come to him. (2) That the Lands were divers years holden by Patentees, who claimed under the Will, and the Trials of no force.

Decree. Upon hearing the whole matter, the Lord Keeper was of opinion, That the Feoffees had no power given them by the Donor to ſell Lands. (2) That certain Lands Decreed, were not in the Deviſe. (3) That the Commiſſioners had altered and changed the Uſe; but for ſetling of which it was decreed, That the Profits of all the Lands (except as therein is excepted) ſhould for ever be diſpoſed in manner following, *viz.* One halfe to the High-ways, one Moyety of the other halfe to the repair of the Church, the other Uſe, given to ſing for the Soul of *Margaret, &c.* to be divided, one halfe to the poor of *Stowe*, the other to the poor of Little where the inhabited. And that *Blomfield* ſhould make a Feoffment. And a Commiſſion was ordered to the Commiſſioners to divide the Lands, and take ſeveral Feoffments to the ſeveral Uſes. And the Lands were divided, and ſett out, and ſeveral Feoffments thereof made accordingly.

Michael. 22 Jacobi.

Rowe, *againſt the Poor of the Alms-houſe in* Taviſtock, *in Com.* Devon.

Devon. *John Fitz* obtained a Leaſe of divers Meſſuages and Lands, from the Lazermen of the Almshouſe in *Taviſtock*, in the County of *Devon*, for 100 years, at 5 Nobles *per ann.* *John Fitz* makes a Leaſe thereof in *Anno*, 1619. for 60 years.

Commiſſioners for *Charitable Uſes* decree, That the preſent Governors ſhould enter and hold the Lands, and ſhould Lett them but for ſeven years at the Rack-Rent. And that *Rowe* ſhould pay 50 l. for the mean Profits by him received.

P. 22 Jac. The Lord Keeper upon hearing the Exceptions, orders, That *Rowe* ſhould ſurrender his Leaſe, and take a new Leaſe for twenty one years, at 4 l. *per ann.* which was 46 s. 8 d. increaſe of Rent, *per ann.*

5 Car. Prim. Rot. 1.

The Town of Northampton.

LAnds given to a *Charitable Uſe*, lying among the Exceptants Lands, were decreed to be ſett out by the Exceptant, by a day, which he not doing, a Commiſſion was awarded, to ſett out ſo much of the Exceptants Lands for the *Charitable Uſe*, as the Lands originally given to the Poor, which was done accordingly.

Termino Trin. 17 *Jac.* 1619.

The poor of Yervel, *in Com.* Somerſet *againſt* Francis Sutton, *and others.*

THe King, by his Letters Patents, gave Licence to *John Woborne* and *Richard Levett*, Chaplains, that they in the Honour of the Holy Martyrs *St. George* and *St. Chriſtopher*, ſhould found one Alms-houſe of one Cuſtos, for two Wardens, and twelve poor people at *Yervel*, in the County of *Somerſet*. And that the ſaid Cuſtos, Wardens, and poor People, and their Succeſſors, might Purchaſe, Procure, and Receive Lands, Tenements, Rents, and other Poſſeſſions, to the value of 10 Marks yearly, for ever. 18 *Edw.* 4. *Woborne* and *R. Levett* founded an Alms-houſe, and 14 *Junii* 18 *Edw.* 4. by Writing, Indented, Confirmed, to the Cuſtos, Wardens, and poor people by name, 128 Acres of Land in *Makeford*, and other places in the County of *Dorſet*, called *Garland*. The King 25 *Nov.* 18 *Edw.* 4. gave Licence to *John Woborne*, that he might give 128. Acres, *&c.* And to *Thomas Bartlet* and others, that they might give to the ſaid Cuſtos, *&c.* fourteen Meſſuages, and twenty Acres of Land in *Yervel*, &c. which were not immediately holden of the King. And it was found by *Inquiſition*, taken upon the Statute of *Charitable Uſes*; that ſome of latter years having had the cuſtody and diſpoſing of the ſaid Lands and Tenements, had miſimployed them, contrary to the Truſt in them repoſed, *viz. F. H.* being Cuſtos of the ſaid Alms-houſe, with the Wardens and poor People of the ſaid Houſe, then being, by their Deed, dated 20 *September* did Demiſe to *W.* a Cloſe, *&c.* for forty one years, for forty ſhillings Fine, and twenty three ſhillings *per ann.* Rent; and that that Cloſe was well worth a Fine of ten pounds, above the Rent. And that the ſaid Cuſtos, Wardens, and poor people, 20 *April*, 30 *Eliz.* did Demiſe to *F. M.* a Tenement and Cloſe, *&c.* for ſixty years, and ten ſhillings Rent; and alſo that they did Demiſe part of the ſaid Lands to *F. H.* for ſixty years, for forty ſhillings Fine, and fourteen ſhillings *per ann.* Rent, the Premiſſes being deemed then, to be well worth a Fine

9 *Nov.* 17. Edw. 4.

The Caſe.

18 Edw. 4.

25 *Nov.* 18 Edw. 4.

1619.

of 10l. That they demiſed a Meſſuage alſo for ſixty years, and thirty ſhillings Rent, which Premiſſes were well worth a Fine of five pound. And divers other Leaſes were found, which were worth more Fine and Rent than was paid: And that the Cuſtos took the Fine, and the Wardens and poor people were only called to the ſealing of the Deeds; and it was alſo found, That ſome of them that bought, as of thoſe that ſold the Premiſſes aforeſaid, knew the Lands were given to *Charitable Uſes*. Whereupon the Commiſſioners decree, That all the parties that had broken the Truſt repoſed in them, and defrauded the Uſes by Leaſe *&c.* ſhould pay the poor people, which had received prejudice thereby, a full recompence,

Com. Decree.

Exceptions. 1. To which Decree, *Francis Sutton* made theſe Exceptions. (1) That the Commiſſioners did not give warning, nor call the ſaid parties to the Inquiry, whereby they could not have their lawful challenges.

2. That the ſaid Alms-houſe and Lands given, were within the Town of *Tervel*, which was an antient Town Corporate. And that by the firſt *Proviſo* in the Act, it is expreſly limited, That that Act, nor any thing therein contained, ſhall not extend to any ſuch Land.

3. That there are ſpecial Governors appointed to govern and direct the Lands and Tenements, given to the ſaid Alms-houſe, namely, a Cuſtos and two Wardens, by the expreſs words of the Donors or Founders of the ſaid Alms-houſe, and ſo by ſpecial Proviſo, the ſame are excepted in the ſame Act of Parliament.

4. That it appeared by the Inquiſition it ſelf, That ſuch Grants or Leaſes as are ſuppoſed to be made for too ſmall a Fine, and for too large a Term, are either void or voidable by the Ordinance of the ſaid Houſe, or elſe the benefit thereof did redound, and ought to come to the Leſſees Uſe. And the Leſſors or Governors made no benefit thereof, And therefore if any Decree, or Order ſhould have been made, it ſhould have been made againſt the Leſſees, who had notice of the Truſt, and not againſt the Leſſors or Governors.

5. That *Francis Sutton* is only Executor unto the ſaid *John Hacker*, the late Cuſtos, and ſo no way within the Statute.

The poor Peoples Anſwer.

Anſwer. 1. THat the Commiſſioners did call the parties intereſſed, according to the form of the Statute.

2. That the Alms-houſe and Lands, or the greateſt part of them, are not within the Town of *Tervel*; neither is the ſaid Town, a Town-Corporate, within the Proviſo of that Statute.

3. That there are no ſpecial Governor or Governors within the ſaid Town, within the meaning of the Proviſo of the ſaid Statute, appointed to govern or direct the Lands, Tenements, and things diſpoſed of, to the Uſes aforeſaid, neither are the Cuſtos and two Wardens of them-

themſelves, or by themſelves, appointed to Govern or direct the Lands, Tenements and things to the uſes aforeſaid, within the words or meaning of the Proviſo of the ſaid Statute.

4. That the Leſſors and Governors, and not the Leſſees ought to be charged, as by the ſaid Order and Decree they are charged.

5. That *Francis Sutton* ought to be charged, as in the ſaid Order and Decree he is charged, both by the words, and alſo by the meaning of the ſaid Statute, and prayed execution upon the Order, *&c.*

Upon hearing of the Cauſe, the Defendants Counſel only opened two of the Exceptions, becauſe they were upon matter of Law. (1) One was, That by Law, the Hoſpital being within a Market-Town, and having a Cuſtos and Wardens, ſpecial Governors, the ſaid Hoſpital was not within the ſaid Statute. (2) The other, for that the Decree did not charge the Defendants for Letting the Lands belonging to the Hoſpital of *Yervel*, not at the higheſt rate, and did not charge them with fraud, but only with letting at an under-value. And foraſmuch as the farmer of the ſaid points in Law, was ſuch as might ſtrike at the root of the ſaid Statute, if the ſame might have been admitted; the Lord Chancellor thought not fit to give much way thereunto But touching the latter, his Lordſhip conceiving, That if the under valuations were not great, nor done upon fraud, it was not meet to queſtion the Defendants for the ſame; but in caſe there were negligence in Letting at, and undervalue the recompence as to be made by the Tenants, and not by them that made the Leaſes. *25 April 16 Jacobi*

The Defendants Counſel alledging, That the Leaſes made of the Lands, were made but as the Tenants might live thereby, and according to the cuſtom of the Countrey, and upon as great Fines and Rents, as had ever before been given for the ſame Lands. Objections.

The Plaintiffs Counſel alledging, That the Leaſes were made by the Leſſors, at a far under value to their Children and Friends, by practiſe and fraud. It was referred to Sir *John Bennet* to conſider, whether the Leaſes were made, according to the cuſtom of the Countrey; and whether the Leaſes were made to the Children and Friends of thoſe that made them. Reply. Reference.

But afterwards, upon the Plaintiffs Petition, his Lordſhip ordered a Commiſſion to the Biſhop of *Bath* and *Wells*, and to Doctor *Huſſey*, one of the Maſters in *Chancery*, who (*inter* all) found that the Leaſes were made 14 years before the Statute of 43 *Eliz.* And to end all differences, the Commiſſioners Reſolved. Commiſſions awarded to Maſters in *Chancery*.

1. That the Terr-Tenants, and *William Grobham*, whoſe Predeceſſors, Cuſtos of the ſaid Alms-houſe negligence, was inexcuſable, ſhould pay 10 l. to the poor of the Alms-houſe. Maſters Report.

2. That for a fuller amends unto the poor people, the Tenants who had taken Leaſe for longer terms, than the Statute made for Hoſpitals doth permit, ſhould ſurrender the ſame, and take

new

new Leaſes for ſuch tearms, as the Statute doth allow.

3. That for thoſe Leaſes, the Tenants ſhould have their Rents improved, or pay ſuch reaſonable Fines, as might make beſt for the Poor, and not be unreaſonably burdenſome to the Tenants.

4. That for preventing of future abuſes, concerning the ſaid Hoſpital the Biſhop and Mr. *Huſſey* thought fit (*inter alia*) that from thenceforth they ſhould Lett no Leaſes for longer terms than the Charter of their Foundation and the Laws of the Land have preſcribed, which being certified by the ſaid Commiſſioners, the Lord Chancellor confirmed the ſame.

Decree.

Termino Paſch. 16 *Caroli ſecundi*, Robert Wright *and the School of* Newport-Pond *in* Eſſex.

The Caſe.

This Caſe is printed in Mr. *Hearns* Book, but not the Exceptions, &c.

JOyce *Francklands* Widow, ſeized in Fee of a portion of Tythes in *Banſted* in *Surrey*, by her laſt Will, dated 20 *Feb.* 1586. deviſes the ſame then in Leaſe, for divers years to come, at 7 l. *per ann.* to five perſons, and their Heirs, to the intent, that they and their Heirs and Aſſigns, ſhould yearly, for ever, imploy, and beſtow the yearly Rents, Iſſues, and Profits thereof (*inter alia*) to the erecting, maintaining, and finding of a Free Grammar School in *Newport* in *Eſſex*, of a competent number of Scholars, of the Children of the Inhabitants there; if there were but one Maſter, he ſhould have 20 l. *per ann.* And if a Maſter and Uſher, then the Maſter 20 Nobles, and the Uſher 20 Nobles. and appoints the Maſter of *Gonvyel*, and *Caius* Colledge in *Cambridge*, Governor.

1 *Nov.* 41 *Eliz.* 1599.

27 *Nov* Jac. *The Caſe.*

Joyce dyed ſeized, the Deviſees received the Rents, and erected a School-houſe, and deviſed the ſame portion of Tythes to *Richard Wright* for 36 years, at 7 l. *per ann.* The Deviſees in conſideration of the Surrender of that Leaſe, and of 40 l. diſburſed by *Richard Le Wright* in Suits at Law, brought againſt him for the Premiſſes, demiſed the ſaid Tythes to *Richard Le Wright*, from *Michaelmas* then laſt, for 50 years, at 7 l. *per ann. Rich. Le Wright* made *Robert Le Wright* his Executor, and dyed, 1634. *Robert* enjoyed the Tythes during the reſidue of the term of 50 years, and the Tythes from *Richards* death, until 1650. were worth 43 l. *per ann.* above the Rent. And afterward, the ſurviving Truſtees, demiſe the Tythes to *Edward Nightingale*, after the determination of the Leaſe of 50 years, for 21 year, at 10 l. *per ann. Edward Nightingale* for 150 l. ſold that Leaſe to *Robert Le Wright*; and from *Michaelmas*, 1650. until *Michaelmas* 1660. at which time, the Leaſe of 50 years ended, the Tythes were worth 60 l. *per ann.* above the Rent.

16 *Apr.* 22 Car. 1. 1646.

26 *Nov.* 14 Car. 2.

Commiſſioners Decree.

Theſe things being found by Inquiſition, Commiſſioners upon the Statute for *Charitable Uſes* did decree, That the concurrent Leaſe, made in 1646, at the Rent of 10 l. *per ann.* was made contrary to the intent of the Donor, and was a miſimployment of the ſame Tythes, and a defrauding the *Charitable Uſe* within the ſaid Statute. And that the ſame Leaſe, and the Aſſignment thereof to *Robert Le wright*, and all mean Aſſignments of the ſame, ſhould from

from thenceforth be utterly void, and of none effect. And that the Feoffees ſhould Lett the ſame Tythes at the true value, and that no Leaſe ſhould be afterwards made for above 21 years in poſſeſſion.

Robert Le Wright put in Exceptions to the Decree, (1) That the Commiſſioners had not power to make void the Leaſe in Reverſion made to *R. Nightingale* by the Feoffees, who had the Fee and Inheritance of the Tythes. (2) Nor to decree a greater Rent to be reſerved upon any new Leaſe than was reſerved at the making of the Will. (3) Nor to decree an increaſe of the Rents againſt him, but rather againſt the Feoffees that broke the Truſt. And that *R. Le Wright* had aſſigned to one *Andrews*, for a valuable conſideration, *viz.* 150 l. *Exceptions.*

But the Lord Chancellor, upon full hearing of the ſaid Exceptions, confirmed the Decree. *Decreed.*

Higgins *and the Poor of* Southampton. 13 *April*, 1636. Car. 1.

Nathaniel Mill, by his laſt Will in Writing, deviſed ſeveral ſums of Money, in all amounting to 41 l. to be paid out of the Mannor of *Wolſton*, to the Mayor, and the three Senior Aldermen of *Southampton* yearly, for putting out Apprentices, Relief of aged perſons, *&c.* *The Caſe.*

Commiſſioners upon the Statute of *Charitable Uſes*, decree the Money. *Com. Decret.*

The Exceptant being owner of that Mannor, complained of the Decree, for that the ſaid Mannor was holden in *Capite*, and ſo the ſaid *Will* was void, as to a third part thereof. And upon hearing before the Lord Chancellor, *Bridgeman*, aſſiſted by Mr. Juſtice *Wild*, and Mr. Baron *Wyndham*, the Decree was confirmed to all the three parts. *Exceptions.* *Com. Decret confirmed.*

Trin. 21. *Car. Regis* 2.

Chriſtopher Meek *Exceptant*, James Hyde, *Dr. in Phyſick, on behalfe of the Chancellor, Maſters and Scholars of* Magdalen Hall *in the Univerſity of* Oxon, *Reſpondents.*

John Meek, Clerk, ſeized in Fee of divers Meſſuages and Lands in *Eaſt Smithfield*, in *St. Katherines*, and *Aldgate*, in *Middleſex*, by his laſt Will in writing, dated in *Nov.* 1665. did give 100 l. *per ann.* for ever, to ten poor Scholars, to be choſen out of the Free-School of *Worceſter*, and placed and educated in *Magdalen Hall* in *Oxon*, to wit, to each of them 10 l. and what his Lands ſhould fall ſhort of 100 l. *per ann.* ſhould be ſupplyed out of his perſonal Eſtate by his Executors. And if the Rents ſhould increaſe, then more Scholars ſhould be elected, *&c.* and have 10 l. *per ann.* apiece; and 14 *Feb.* 1665 he dyed, ſeized of Lands, of the value of 84 l. *per ann.* This Will was ſuppreſſed, and a Nuncupative Will ſet on foot by one *Magwick*, and *pendente lite*, Letters of Adminiſtration were granted *The Caſe.*

granted to Dr. *Hyde*, Principal of *Magdalen Hall* and *Syndick* of the Univerſity of *Oxon*, and the Nuncupative Will was afterwards ſet aſide; and one *John Meek* was Heir at Law, and refuſed to convey the Lands, according to the written will, and no Rent was paid, but lay in the Tenants hands. And Dr. *Hyde*, as Adminiſtrator, had received 100 l. which Matters were proved by Witneſſes, and found by Inquiſition. And further, That the Lands and Tenements ought to be ſetled on the Chancellor, Maſters, and Scholars of *Magdalen Hall*, in the Univerſity of *Oxford*. Whereupon, Commiſſioners, by vertue of the Statue for *Charitable Uſes*, being of opinion, that the written Will was not revoked, or made void, though concealed, did decree, That the Chancellor, Maſters, and Scholars of the Univerſity of *Oxford*, and their Succeſſors, ſhould, for ever, then after ſtand ſeized of the ſaid Lands and Tenements, and ſhould receive the Rents, and pay them over to *Magdalen Hall*, to the Uſes in the Will. And that the Heir ſhould be for ever, excluded and debarred; that Dr. *Hyde* ſhould out of the Money in his hands, lay out 320 l. in the purchaſe of ſo much Land, as would make the Lands, whereof Mr. *Meeke* dyed ſeized, 100 l. *per ann.* and 41 to make up the Arrears of the 100 l. *per ann.* for three years. And that the Lands to be purchaſed, ſhould be ſetled as the other Lands were. And that the Tenants ſhould pay the remaining Rents in their hands, to the Univerſity, for the purpoſes aforeſaid, and ſhould deliver the poſſeſſion of the Lands to the Univerſity; and that Leaſes ſhould be made for 21 years in poſſeſſion; and that the Will ſhould be performed.

Com. Decree.

Exceptions.

To which Decree, *Chriſtopher Meeke* put in Exceptions (1) That the Decree was *Felo de ſe*, for that the Inquiſition found, That he was Heir to *John Meeke*, and that he made a Will, but did not find, that ever any ſuch Will was produced, or was ever ſeen after the death of *John Meeke*, and ſo the Decree was grounded upon the imaginations of Jurors, and fancies of Commiſſioners, without ground, for *Omne Teſtamentum morte conſummatum eſt*, ſo no Will till after his death, and if any, annihilatory and revokeable, *in articulo mortis*, and of no effect, and was not his Will in propriety of Speech, or legal underſtanding till his death. (2) That *John Meeke* made no ſuch Will, but dyed *inteſtate*, and the Lands deſcended to the Exceptant. (3) That no Evidence was given to the Jurors, but Depoſitions taken in the Prerogative Court, which was no Evidence at Law or Equity. (4) That the Jurors did not find that *John Meeke* dyed ſeized in Fee, and ſo nothing could paſs by the pretended Will. (5) That the Decree was grounded upon a void and inſignificant Inquiſition. (6) That the Commiſſioners have determined a Right, and ſet up an Eſtate in a Corporation, no way at all concerned, mentioned, or intended by *John Meeke* in the pretended Will, *viz.* The Chancelor, *&c.* and they to ſtand ſeized to the uſe of a Hall, being no Corporation, or body Politique, capable in Law or Equity, to receive

receive the Lands, without any reſpect of any Right, or Founderſhip, or Viſitation, which at leaſt, ought to have been reſerved and ſaved to the Exceptant, as Heir at Law; and others of his Bloud ought to have been preferred in the Elections, and the Commiſſioners had for ever barr'd his Heirs of all demand, in caſe of breach of Truſt in the Univerſity. (7) They ought not to have decreed the 320 l. to purchaſe Lands, *&c.*

To which the Reſpondents anſwer (1) That the Inquiſition and Decree were well warranted by the Statute. (2) That in the Inquiſition, ſufficient matter did appear of Truth, Fact and Right, whereby the Commiſſioners might barr the Exceptant, although the Will was not produced, nor proved, to be ſeen after his death. (3) That it was proved to the Jurors, that *John Meeke* made ſuch a Will in Writing, as in the Inquiſition is mentioned; and that *John Meeke*, a little before his death, declared, That he had not altered, nor would alter that Will. (4) And that *Jonathan Magwick* did imbezle the Will; and the Exceptant did ſay, That his Uncle did tell him, that he had made his Will, and had given his Land to *Magdalen Hall*, for the maintainance of poor Scholars, and had promiſed to ſettle the Lands accordingly; and divers other anſwers were given to the Exceptions. And on the 26 of *June*, 21 *Car.* 2. *Regis*, the Matter was heard before the late Lord Keeper *Bridgeman*, and his Lordſhip having heard the Exceptions and Anſwers, and what was alleadged on either ſide, his Lordſhip being fully ſatisfied, that there was ſuch a Will made by the Teſtator, and the Decree made thereon, ſaw no cauſe to reverſe the Decree, and therefore confirmed the ſame.

Answer.

Decree confirmed.

Hill. 12. *Car.* 1.

Blackſton *and the Hoſpital of* Hemſworth.

Robert Holgate, late Archbiſhop of *York*, by his Will, dated 27 *Aprilis* 1555. did Deviſe to Sir *William Peters*, &c. whom he made Executor of his Will, and their Heirs, divers Houſes and Lands in *Yorkſhire*, to the intent to erect an Hoſpital in *Hemſworth*, for one Maſter, and 20 Brethren and Siſters, to continue for ever. And directed an allowance to each of them, being about the then value of the Lands; and authorized his Executors to ſell his Goods, and divers of his Lands; and that the Executors ſhould keep no Goods or Profits, beſides (their charges) in their hands, but beſtow the ſame to the Glory of God, and the health of his Soul. The ſurviving Executors proved the Will, and became ſeized, and 17 *Martii* 3 and 4. *P* and *N.* Renting a Licenſe to erect the ſaid Hoſpital, ordered a common Seal, *&c.* ſetled 100 Marks *per ann.* upon the Maſter and Brethren, the Lands being worth 500l. *per ann.* The Executor ſold the Lands, reſerving only 100 Marks *per ann.* to the Hoſpital. 21 *Jacobi*, The Vicar and Churchwardens of *Hemſworth*, exhibited a Bill in *Chancery*, againſt ſuch as had the Lands, and upon

The Caſe.

Bill in Chancery.

the Hearing, Sir *Edward Philips*, Maſter of the Rolls, increaſed the 100 Marks *per ann.* to 100 l. declaring, that he did not conceive, that the Defendants Fines, with Proclamations, barred the Charity. Afterwards the Maſter, Brethren, and Siſters of the Hoſpital, conceiving the former Bill to be exhibited by practiſe, exhibited their Bill againſt the Poſſeſſors of the Land; and did ſet forth, That the Lands were given to the Hoſpital, and that in breach of Truſt, the Lands had been conveyed away in Fee-Farm, reſerving upon all, but 100 Marks *per ann.* to the Hoſpital.

Anſwer. The Defendants, anſwered, and ſet forth their Titles, and claimed the Lands, ſome by Deſcents, and others by Conveyances and Fines, for valuable Conſiderations.

The Lord *Elſmore*, and the Judges declared, that there had been an apparent breach of Truſt, and that the Hoſpital had been abuſed, by being kept from what by the Donor was meant unto them, *viz.* the Land it ſelf, and not only a dry Rent, being appointed by the Donor, for the good and benefit of the Hoſpital. Neither did his Lordſhip conceive, That the Fines, with Proclamations, ought to be a barr to the ſaid *Charitable Uſe*. And that all the Purchaſors claiming under the Truſt, which was broken, and there being a violent preſumption, that they had notice of the Truſts, as well, for that they that ſold the ſaid Lands, could not make any Title, but by the Will of the ſaid Arch-biſhop; as alſo for that they did all pay Rents to the ſaid Hoſpital, And in 12 *Caroli primi*. This Matter came again in queſtion, before the Lord Keeper *Coventry*, who directed a Commiſſion to be awarded upon the Statute of *Charitable Uſes*. The Commiſſioners made a Decree for the whole Lands, to which, Exceptions were put in by one *Brigg*, who claimed, under a Purchaſe, made by one Mr. *Wymarke*, who pretending the Crown was entituled to the Lands, had attained a Patent thereof from Queen *Elizabeth*, as concealed Lands.

24 *Jan.* 12. *Car.* 1. and 4 *Feb.* 12 *Car.* 1. The Lord Keeper, aſſiſted by Judge *Hutton*, Judge *Jones*, and Judge *Berkley* (no colour of proof being offered, that the ſame were concealed Lands as his Lordſhip but only the Patent it ſelf) His Lordſhip did ſee no cauſe to give allowance to the Patent, to overthrow a *Charitable Uſe*. And his Lordſhip having peruſed the Evidences, confirmed the Decree, as to all but ſome Chantry Lands in the Patent, which were not the Arch-Biſhops. And that the Hoſpital ſhould hold the Lands for ever; but becauſe the Exceptant had laid out much Money in Building, upon the Hoſpital-Lands, he ſhould have a Leaſe for one and twenty years, at one hundred and twenty pound *per ann.* being above fifty pound *per ann.* increaſe, of what had been formerly paid to the Hoſpital, the Lands being above one hundred and fifty pound *per ann.* above the old Rent of ſeventy pound *per annum*, reſerved to the Hoſpital, and ſo would be worth a hundred and thirty pounds to the Leſſees, above the Rent which they

they ſhould pay for it, and a Leaſe was made accordingly.

Exceptions. Afterwards one *Blackſton* put in new Exceptions to the ſaid Decrees to which the Hoſpital pleaded the former proceedings. And in *October* 15 *Car.* 2. the Matter was heard before the Lord Chancellor *Clarenden*, and Mr. Juſtice *Tirrel*, and the Plea allowed. *Plea allowed.*

18 *June*, 15 *C.* 2. And 18 *June*, 15 *Car.* 2. it was ordered, That the Exceptant, who had much of the Lands, ſhould accompt for his proportion of the Rent of one hundred and twenty pounds *per ann.* reſerved upon the Leaſe, directed by the Lord *Coventry*, during the Terme, and ſince it expired, till *Whitſuntide* before. It was propoſed, That the Exceptant *Blackſton*, being a great ſufferer for His Majeſty, in the late Wars, might renew his Leaſe upon reaſonable terms, which was referred to the Arch-Biſhop of *York*. *Order thereupon.* *Propoſed.*

17 *July*, 166. 2. The Lord Chancellor having adviſed with the then Lord Chief Juſtice, and Lord Chief Baron, upon the merits of the cauſe, and a Maſter's Report, touching the Arrears, declared, That he did not ſee any cauſe to recede from the former Decree of the Commiſſioners, nor the Lord *Coventrye*'s Confirmation, in 12 *Car. primi*. And that he could not abſolve the Exceptant, from the two hundred and twenty pounds, certified by the Maſter, but decreed the payment thereof, and ratified the Lord Keeper *Coventrye*'s Confirmation. And that the Hoſpital ſhould enjoy the Lands; but a Leaſe ſhould be made to the Exceptant, for the Fine and Rent. formerly propoſed by the Arch-Biſhop, with the conſent of the Hoſpital, *&c.* *L. Chancellor's Decree.* *Former Decrees confirmed.*

I.

ter

rs *The Caſe*

ve
o
M
and t
veyance
an
ti
an
ſaid
and the Decree ann

Veneris, 19 *Jan.* 19 *Car.* 2. *in Canc.*

Inter Will. Rooks & Edw. Potter, *ex parte iſtius partis Paroch. Sancti Egidii, extra* Cripplegate, *jacent. intra* London, Exceptantes, & *Richardum D* ton, *ex parte iſtius partis ejuſdem Paroch. jacent. in Com. Midd.* Reſpondentes.

The Caſe. Criplegate, London.

THe Matter upon the Exceptions, put in by the Exceptants to a Decree made in this Cauſe by the Commiſſioners, upon the Statute of *Charitable Uſes*, coming this preſent day to be heard and debated before the Right Honourable the Lord Keeper of the Great Seal of *England*, in the preſence of the Counſel, Learned, on both ſides. The ſubſtance of the Matter, upon which the ſaid Decree is grounded, being, That one *Mary Chambers*, by her laſt Will in Writing, 7 *June* 1654. did deviſe unto the Churchwardens, and Overſeers for the Poor of the Pariſh of *St. Giles* without *Cripplegate*, *London*, the ſum of 100 l. to be paid to them, for the increaſe of their Pariſh Store, which ſaid 100 l. was accordingly paid unto the then Churchwardens of that part of the ſaid Pariſh, lying within *London*, for the uſe of the Poor aforeſaid, and the ſaid Money was by them placed out at intereſt, for the uſe aforeſaid: And that the ſaid Exceptants, being Churchwardens of that part of the ſaid Pariſh, which lyeth within *London*; did, on, or about the firſt of *July*, 15 *Car. nunc Regis*, receive 31. for Intereſt of the ſaid 100 l. and diſpoſed thereof to the Poor of that part of the ſaid Pariſh, which is in *London*, no part thereof being paid to the Poor of the other part of the ſaid Pariſh lying in *Middleſex*. Upon which, complaint being made, the Commiſſioners, impowred for that purpoſe, did thereupon Decree, That the ſaid Exceptants ſhould pay unto *Henry Weſt* and *Hugh Shipley*, the Churchwardens of that part of the ſaid Pariſh, which is in *Middleſex*, for the uſe of the poor there, thirty ſhillings, and one ſhilling for damages, and ten pounds to the Reſpondent, or proſecutor, for Coſts. The Exceptants have excepted thereunto, for that they being Churchwardens for the Poor of that part of the ſaid Pariſh which is in *London*, they received the ſame, and imployed the ſame, for, and towards relief of the ſaid Pariſh, living in *London*. (2) And the Exceptants are in no fault, they not miſimploying the ſame, but paying it to the Poor as aforeſaid. And the Exceptants Counſel inſiſted. (3) That their Predeceſſors, Churchwardens of that part of the ſaid Pariſh which is in *London*, have done the ſame in Caſes of like nature, and have by the Commiſſioners been indemnified therein. (4) And that the Proſecutor upon a Tryal before the Commiſſioners, touching the Matter in queſtion, hath been Non-ſuited. (5) And upon another Tryal at Law, Verdict paſſed againſt him. (6) That the Money was not miſimployed. And (7) That by the words of the Will, and by the Cuſtom of the Pariſh,

Com. Decree.

Exceptions.

riſh, the Poor in *London* only ought to have the ſaid Moneys. Whereupon, and upon long debate of the Matter, and hearing what was inſiſted upon by the Counſel on either ſide, His Lordſhip allowed the Exceptants Exceptions, put in to the ſaid Decree, they having paid the Money to the Poor of that part of the ſaid Pariſh in *London*, as aforeſaid; and in purſuance of the Verdict, and Non-ſuit aforeſaid, and not converted the ſame, or any part thereof to their own uſes, or miſimployed the ſame. And his Lordſhip conceived the ſaid Decree, made by the ſaid Commiſſioners aforeſaid, to be erroneous; and therefore doth order and decree the ſame to be reverſed, and ſet aſide. *Decree Reverſed.*

24 *Martii* 1659. *Car.* 2.

Weſtham *in* Eſſex, *and* Beſt.

IT was found by Inquiſition, that *Mary Gwilliams*, widow, did, in her life time, hold to her and her Heirs, of the then Lady of the Mannor of *Weſtham*, by Copy of Court-Roll, according to the Cuſtom of that Mannor, a Meſſuage, *&c.* of the yearly value of five pounds: And that the ſame were divers years in the life-time of the ſaid *Mary*, held and enjoyed by *Drew Beſt*. And that the ſaid *Mary*, long before her death, did aſſign, limit, and appoint, That 30 s. of the Rent, Iſſues, and Profits of the ſaid Tenements and Premiſſes, ſhould be yearly imployed and reſerved, in, and for the relief of the poor people, for the time preſent, and from time to time, being in *Weſtham* foreter. And that thirty ſhillings *per ann.* was yearly, for divers years together, in the life-time of the ſaid *Mary*, and by her direction and appointment, paid to the Churchwardens of *Weſtham*, for the relief of the poor people there. And that the ſaid *Mary*, to the intent, that the ſaid yearly ſum of thirty ſhillings might be the better ſecured to be paid, to, and for the relief of the Poor of *Weſtham*, aforeſaid. 4 *Auguſti* 1633. did ſurrender the Premiſſes to the uſes in her Will, and after dyed, and did declare her Will, Mind, and Deſire to be, That 30 s of the Rent of the Premiſſes, ſhould yearly, and every year for ever then after, be paid to, and for the relief of the Poor of *Weſtham*, and after dyed. And that *Drew Beſt* having notice of the ſaid Charitable Deviſe, Aſſignment, Limitation, and Appointment, did for ſome years enjoy the Premiſſes, and pay the thirty ſhillings *per ann.* to the Churchwardens (2) That from the death of *Mary*, *Beſt* and his wife enjoyed the Premiſſes, by vertue, as they pretended, of a Surrender, made by *R. G.* Son and Heir of *Mary*, and had held the ſame eight years, and detained the 30 s. from the *Charitable Uſe*, and that 12 l. was arrear. *Notice.*

Whereupon Commiſſioners Decree, That *R. B.* ſhould pay the Pariſhioners 12 l. for the Arrears and 10 l. more for Damages for deteining the Money, and for the Coſts and Charges of the Pariſhioners of *Weſtham* expended in that Commiſſion and Decree

cree. And that *R. B.* Owners and Proprietors of the Premiſſes, ſhould yearly for ever, pay the 30 s. *per ann.* accordingly.

Rebeca Beſt excepted againſt this Decree. But in *Caroli* 2. the Decree was confirmed by the then Lord Chancellor.

5 *Car.* 1.
Matſall *in* Suſſ.

Suſſex. THe Lord Keeper heard and determined the Matter, upon the Exceptions only.

Appleton *in Com.* Berks.

Berks. THe Lord Keeper heard the Matter upon Exceptions only.

Martlyn *in Com.* Wigorn.

Wigorn. THe Lord Keeper heard the Matter upon Exceptions and Anſwer.

DECREES.

DECREES.

Southamp. ſſ. *At* S. *in the County of* S. *the* 10 *day of* D. *in the* 14 *year of the Reign of our Sovereign Lord* Charles *the* II. *by the Grace of God, King of* England, Scotland, France *and* Ireland, *Defender of the Faith*, &c. *Anno Dom.* 1662.

WHereas by an Inquiſition, taken at *B.* in the ſaid County of *S.* the 21 day of *November* laſt paſt, before *G. F. P. R. W. R. F. W.* Eſquires, by vertue of a Commiſſion, under the Great Seal, bearing date the third day of *N.* laſt paſt, to them and others, or to any four or more of them, directed for the due execution of the Statute, made in the 43 year of the late Queen *Elizabeth*, Entituled, *An Act to redreſs the miſimployment of Lands, Goods, and Stocks of Money, heretofore given to Charitable Uſes*, by the Oaths of *L. H. B. F. R. C. A. R. B. F. A. T. W. H. W. T. F. T. L. G. B. W. B. H. W. L. C. N. L. W.* and *T. W.* good and lawful Men of the ſaid County of *S.* It is found that *F. F.* late of *B.* in the Pariſh of *S.* in the County of *H.* Widow, deceaſed, was in her life-time ſeiſed (amongſt other things) in Fee of, and in a certain portion of Tithes in *B.* in the ſaid County of *S.* in *&c.* And that the ſaid *F.* being ſo thereof ſeized, did make her laſt Will and Teſtament in Writing, bearing date the 22 day of *A.* in the year of our Lord God, 1567. And did thereby give, deviſe, and bequeath unto *N. F.* late of *&c. J. N. S. R. L. F.* and *A. F.* then Inhabitants of the Town of *N.* in the County of *C.* and to their Heirs and Aſſigns for ever. The ſaid portion of Tythes, amongſt other things, by the name of all that the Tithes of *B.* within the County of *S.* with all Profits and Commodities, being part or parcel thereof, or unto the ſame belonging or appertaining, or with the ſame, Letten or Occupied, then being in Leaſe for divers years then to come; Whereupon the Rent of *&c.* by the year, was reſerved, and ſhould be paid, during the ſaid term, unto the ſaid Deviſees, their Heirs and Aſſigns, to the uſes and intents in the ſaid Will mentioned, That is to ſay, That they the ſaid *F. F. J. R.* and *F.* their Heirs and Aſſigns, ſhould yearly and for ever, imploy and beſtow the yearly Rents, Iſſues, and Profits ariſing, coming, and growing by the ſame Tithes, and the Houſes in the ſaid Will mentioned, which then amounted to *&c. per ann.* to the erection, maintainance, and finding of a free Grammar-School within the ſaid Town of *N.* for ſuch a competent number of Scholars as ſhould be thought good to thoſe her Deviſees in Truſt, or unto *D. L.* then Maſter of *C.* Colledge in the Univerſity of *Oxon*, and by them ſhould be ſet down in Writing, under their Hands and Seals, the ſaid number of Scholars, to be of the Children of the Inhabitants of the ſaid Town of *N.* And, whereas it appears by the ſaid Inquiſition, That the ſaid portion of Tythes in *B.* aforeſaid, and the Houſes and Premiſſes in the ſaid Inquiſition mentioned, were all of them given, appointed, and intended by the ſaid *F. J.* to,

and

and for the *Charitable Uſes* afore-mentioned, and for that it hath appeared unto the ſaid Commiſſioners, by the ſaid Inquiſition aforeſaid, that the ſame Tythes now are, and, for the ſpace of many years laſt paſt, have been of a very great yearly value, more than the Rent reſerved by the Feoffees of the ſaid School, upon the Leaſes thereof, over and above all Taxes, Charges, and Repriſes.

Now, we the ſaid *G. J. P. R. W. R. F.* and *L. S.* having called the parties intereſſed in the ſaid Tythes, and having heard and examined the Matters and Things, in and by the ſaid Inquiſition found, and thereby appearing, and being ſatisfied, that according to the true intention of the ſaid *F. F.* all the Rents and Profits of the ſaid Tythes, without fraud or diminution, ſhould be paid and diſpoſed to the ſaid *Charitable Uſe*; and that the ſaid Tythes ought to have been Leaſed, at, or very near to their true yearly value, do, by vertue of the ſaid Statute and Commiſſion, and the Power and Authority thereby to us given, Order, Judge, and Decree, That the ſaid Concurrent Leaſe, or Leaſe in Reverſion, bearing date on or about the 10 day of *A.* in the 20 of the ſaid late King *Charles*, made by the ſaid *P. W. R. H. N. M.* and *S. F.* of the ſaid portion of Tythes, to the ſaid *N. E.* his Executors, Adminiſtrators and Aſſigns, for the term of *&c.* aforementioned, at the Rent of, *&c. per ann.* was alſo made and granted, contrary to the intent of the ſaid *F. J.* and was a miſ-government of the ſame Tythes, and defrauding of the ſaid *Charitable Uſes* within the ſaid Statute. Therefore we the ſaid *G. J. P. R. W. R.* and *J. W.* for reformation of the ſaid abuſes and breaches of Truſt, and to the end, that the ſaid Rents, Iſſues, and Profits of the ſaid Tythes, may be duly and faithfully imployed to, and for the *Charitable Uſes* aforeſaid, for which they were given, limited aſſigned, and appointed by the ſaid *F. J.* do further Order, Adjudge, and Decree, That the ſame Leaſe and Term ſo made of the ſame Tythes to the ſaid *N. E.* as is aforeſaid, and all other mean Aſſignments of the ſame Leaſe are, and either of them is, and from henceforth ſhall be utterly void, and of none effect. And that the ſaid *L. R.* his Executors, Adminiſtrators and Aſſigns, ſhall within one month after notice of this Decree, deliver the ſaid Leaſe and Aſſignment thereof to the Feoffees, which now, or hereafter ſhall be of the ſaid Tythes, ſhall, and may Grant and Lett the ſame Tythes at the true yearly value thereof. The ſame Leaſe thereof made to the ſaid *N. E.* as is aforeſaid, or the Aſſignment thereof notwithſtanding. And we the ſaid Commiſſioners do further Order, Adjudge and Decree, That the ſaid *L. R.* his Executors and Adminiſtrators, ſhall within one month, next after notice of this Decree, pay unto ſuch perſons as now are, or then ſhall be the Feoffees in Truſt of the ſaid Tythes, the ſum of, *&c.* of the Rents and Profits of the ſaid Tythes by him received, from the Feaſt of *St. Michael* the Arch-Angel, in the ſaid Year, 1660. until the 30 day of *S.* 1662. over and above the Rent paid to the ſaid School, and all other Taxes, Charges, and Repriſes. And that the ſame, according to ſuch proportions as in the Will of the ſaid *F. J.* are expreſſed, ſhall be diſpoſed of, and diſtributed to ſuch Perſons, Intents and Purpoſes, to whom it ought to have been paid, if the true yearly value of the ſaid proportion of Tythes, for the time aforeſaid, had been duly received. And that the growing Rents,

Iſſues,

Iſſues and Profits of the ſame Tythes, ſhall be for ever hereafter received by the Feoffees of the ſame Tythes, their Heirs and Aſſigns, and ſhall be by them laid out and diſpoſed of, in manner and form following, That is to ſay, That *&c.* thereof, ſhall be paid *B. R. &c.* The proſecutor of the ſaid Inquiſition and this Decree, for the Moneys laid out, in and about the ſuing out of the ſaid Commiſſion, and the proſecuting of the ſaid Inquiſition and this Decree. And moreover, That all the Rents, Iſſues, and Profits of the Premiſſes hereafter to be received by the Feoffees of the ſame portion of Tythes, their Heirs and Aſſigns, except the ſame ſum of *&c.* ſhall be for ever hereafter diſpoſed, paid, and imployed to the School-Men and Uſher, when there ſhould be one appointed of the ſaid School, and to the Maſter of the Colledge in *O.* for the time being; and in the reparations of the ſaid School-houſe, according to the proportions of the ſeveral ſums of Money, by the Will of the ſaid *F. F.* limited and appointed to the ſeveral perſons and purpoſes in her ſaid Will mentioned and intended. And in caſe the ſaid now Feoffees of the Premiſſes, ſhall refuſe to perform this Decree on their parts, or ſhall be negligent in the performance thereof, Then, and in ſuch caſe, We the ſaid Commiſſioners, do Order, Adjudge, and Decree, That the ſaid now Feoffees of the Premiſſes, and the Survivors of them, ſhall, upon demand, make a new Feoffment, or ſuch other Conveyances, as by Counſel Learned ſhall be adviſed of all the ſaid portion of Tythes in *B.* aforeſaid, whereof they ſtand ſeized to the *Charitable Uſes* aforeſaid, unto *N. T. D. G. C. T. M. B. M. E. S. W.* and *D. J.* being honeſt and ſubſtantial Inhabitants of the ſaid Town of *N.* aforeſaid, and to their Heirs and Aſſigns for ever, to the uſe of them, and their Heirs and Aſſigns in Truſt, to, and for the Uſes, Intents and Purpoſes in the ſaid Will of the ſaid *F. F.* mentioned and expreſſed. And that the ſaid new Feoffees, after the time they ſhall be lawfully eſtated and inveſted in the Premiſſes, ſhall perform this preſent Order, Judgement, and Decree, according to the true intent and meaning thereof. And the ſaid Commiſſioners do further Order, Adjudge, and Decree, That in every Leaſe hereafter to be made of the ſaid Tythes and Premiſſes in *B.* in the County of *S.* aforeſaid, or any of them, by the Feoffees of the Premiſſes for the time being, there ſhall be reſerved the true yearly value thereof. And that the ſame ſhall be thereby made payable to the Feoffees (ſo making the ſaid Leaſe) their Heirs and Aſſigns, to, and for the *Charitable Uſes* in the Will of the ſaid *F. F.* mentioned and expreſſed, and ſhall be made by the ſaid Feoffees, as Feoffees in Truſt of the ſaid *F. J.* for the *Charitable Uſes* aforeſaid, and ſo to be expreſſed in the ſaid Leaſes: and that no Leaſes hereafter to be made of the Premiſſes, or of any part thereof, ſhall be made but in poſſeſſion, and not to exceed the number of 21 years, from the making thereof. *In witneſs, &c.*

DECREES.

Lincoln. AT B. *in* L. *the* 10*th day of* N. *in the* 14*th year of the Reign of our Sovereign Lord* Charles *the* II. *by the Grace of God, King of* England, Scotland, France *and* Ireland, *Defender of the Faith*, &c. *Anno Dom.* 1662.

WHereas by an Inquiſition indented, taken at *B.* aforeſaid, the 2 day of *Octob.* laſt paſt, before *W. B. C. D. E. F.* and *G. H.* Eſquires, by vertue of a Commiſſion under the Great Seal of *England*, bearing date the 11 day of *M.* in the ſaid 14th year of his ſaid Majeſties Reign, to them and others directed, for the due execution of the Statute made, in the 43 year of the Reign of the late Queen *Elizabeth*, Entituled, *An Act to redreſs the miſ-imployment of Lands, Goods, and Stocks of Money heretofore given to* Charitable Uſes, by the Oaths of, *A. B. C. D. &c.* good and lawful Men of the ſaid *B.* It was found, *&c.* As in, and by the ſaid Inquiſition hereunto annexed, it doth and may appear. And whereas the ſaid *B. G.* by his laſt Will and Teſtament in Writing, bearing date the 22 day of *February*, in the year of our Lord, 166c. did demiſe unto his Wife *B. S.* all his Leaſe, Eſtate, and Term of years and Intereſt, which he had of, and in the ſaid Meſſuages and Tenements, ſcituate in *L.* which he held by force of ſeveral Leaſes, granted by the Feoffees of the Grammar-School of *P.* in *L.* as by a Copy of the ſaid Will proved before us the Commiſſioners afore-named, it doth and may appear. And foraſmuch as we are fully ſatisfied by the ſaid Will of the ſaid *B. G.* and by other proofs made before us, that the ſaid *B. G.* at the time of the taking of the ſaid Leaſe of 40 years, had notice of the *Charitable Uſes* aforeſaid. Now we *B. W. B. L. B. M. M. R. B. P. N. P. C. R.* being Commiſſioners, and perſons nominated and authorized in, and by the ſaid Commiſſion, having firſt called the preſent Feoffees of the Lands, Tenements, and Hereditaments aforeſaid, and the ſaid *B. S.* and *B. F.* in the ſaid Inquiſition named before us, and Oath being made, that they were ſerved to appear before us, and having heard *S.* and *F*, and their Council, and having examined and conſidered of the Matters and things, in, and by the ſaid Inquiſition found, and the Will of the ſaid *B. G.* and being fully ſatisfied, that all the Rents and Profits of the ſame Premiſſes, are to be paid and diſpoſed to the ſaid *Charitable Uſes* afore-mentioned. And that the Houſes afore-mentioned, ought to have been Leaſed at the true yearly values thereof; are of opinion, and do adjudge and decree, That the afore-named Feoffees and Truſtees of the Lands, Tenements, and Hereditaments, given, limited, and appointed by the ſaid *F. J.* to the *Charitable Uſes* aforeſaid, who made the ſeveral Leaſes in the Inquiſition mentioned, have abuſed, and broken their Truſt, concerning the ſaid Houſes in *L.* aforeſaid, and have imployed the ſaid Houſes in *L.* aforeſaid, by granting the ſaid ſeveral long Leaſes thereof, at much leſſer values, then the ſame Houſes were reaſonably worth, to be Lett at the reſpective times of the making of the ſaid reſpective Leaſes there-

thereof. And that the ſaid Leaſes and Occupiers of the ſaid Houſes, have miſ-imployed the ſame Houſes for the times which they have held and enjoyed the ſame, and received the Rents and Profits thereof, not paying the yearly values thereof to the Charitable Uſes aforeſaid: Therefore, we the ſaid Commiſſioners, to wit, the ſaid *E. W. B. G. M. B. M. R. B. P.* and *H. N.* do Order, Adjudge, and Decree, that the ſaid ſeveral Leaſes, to wit, the ſaid Leaſes made to the ſaid *B. G.* for 40 years in poſſeſſion, as is aforeſaid, the ſaid Leaſe ſo made to the ſaid *R. L.* for 40 years in poſſeſſion as is aforeſaid, and the ſaid Leaſe ſo made to the ſaid *W. F.* in Reverſion as is aforeſaid, and every of them are, and from henceforth ſhall be utterly fruſtrate, and void, to all intents and purpoſes, as if the ſame had never been made or granted. But foraſmuch as it appeareth by the ſaid Inquiſition, That *B. G.* did heretofore lay out 150 l. upon the new building of the Houſe and Premiſſes ſo to him Demiſed, as is aforeſaid, and thereby advanced the yearly value thereof: and for that it alſo appeareth by the ſaid Inquiſition, That *B. G.* did heretofore lay out 150 l. upon the new building of the Houſe and Premiſſes ſo to him demiſed, as is aforeſaid, and thereby advanced the yearly value thereof: And for that it alſo appeareth by the ſaid Inquiſition, that the ſaid Meſſuage and Premiſſes ſo demiſed to the ſaid *B. G.* as is aforeſaid, was worth 20 l. *per ann.* at the time of the making of the ſaid Leaſe, above all Charges and Repriſes: And by the teſtimony of Witneſſes ſworn before, it was proved, that the ſame were of greater value; and there being no Covenant or Agreement in the ſaid Leaſe, for the new building of the ſaid Houſe; And for that it is now about 20 years, ſithence the ſaid Houſes were new built, and the ſame having been worth, ever ſithence the building thereof, above 28 *l. per ann.* above the ſaid Rent of 14 l. reſerved by the ſaid Leaſe thereof; We the ſaid Commiſſioners are of opinion, That the ſaid *B. G.* hath, by the ſaid overplus Rents, been re-imburſed the ſaid ſum of 150 l. ſo by him laid out in the ſaid building, with an overplus: And therefore we the ſaid Commiſſioners do further Order and Decree, That the overplus Rents of the ſaid Houſes already received, ſhall be allowed for the Moneys laid out by the ſaid *B. G.* in the building thereof. And moreover, that the now Feoffees of the ſaid Premiſſes, or the ſurvivor of them, ſhall make, ſeal, and execute a new Leaſe of the ſaid new-built Houſes to the ſaid *B. S.* her Executors and Aſſigns, for ſo many years of the ſaid term of 40 years ſo granted to the ſaid *B. G.* as aforeſaid, as by efluxion of time are not yet expired, at the true yearly value thereof. And that the Rent to be reſerved in, and by the ſaid Leaſe, ſhall be made payable to the ſaid Feoffees, their Heirs and Aſſigns, to, and for the Charitable Uſes in the Will of the ſaid *F. F.* mentioned, expreſſed, and declared; and to be paid at ſuch days and times, as the Rent reſerved by the former Leaſe thereof are limited and appointed to be paid, and with ſuch Proviſoes, Covenants, and Agreemetts, as in the ſaid former Leaſe are compriſed and ſpecified. Provided always, and the ſaid Commiſſioners do further order and decree, That if the ſaid *B. S.* ſhall not come in and ſubmit her ſelf to this preſent Order and Decree, and ſurrender up the ſaid old Leaſe of 40 years, by this Decree, fruſtrated and declared void, and deſire to have the preferment to take ſuch new Leaſe within one moneth next

after, ſhe ſhall be ſerved with a Writ of Execution of this Decree, That then the ſaid *B. S.* and all claiming under her, or under the ſaid *B. G.* ſhall quit, and yield up the poſſeſſion of the Premiſſes aforeſaid, to the Feoffees of the ſame Premiſſes. And that then the ſaid Feoffees ſhall grant a Leaſe of the ſame Houſes, to ſuch perſon or perſons as they ſhall think fit, in ſuch manner, as is herein after mentioned. And we the ſaid Commiſſioners do further order and decree, the now Feoffees of the ſaid Houſes and Premiſſes, or the Survivors of them, ſhall alſo make, ſeal, and execute a new Leaſe of the ſaid Houſe and Premiſſes, heretofore granted to the ſaid *L. R.* as aforeſaid, to the ſaid *B. F.* his Executors and Aſſigns, for ſo many years of the ſaid term of 40 years to the ſaid *L. R.* heretofore granted as aforeſaid, as by effluxion of time are not yet expired, at the true yearly value thereof; the ſame before us to be worth 24 l. *per ann.* to be Lett, or thereabouts: And that the Rent to be reſerved in, and by the ſaid Leaſe, ſhall be made payable to the ſaid Feoffees, their Heirs and Aſſigns, to, and for the Charitable Uſes in the Will of the ſaid *F. F.* mentioned, expreſſed and declared, and at ſuch days and times as the Rent reſerved by the former Leaſe thereof, are limited and appointed, and with Proviſo's, Covenants, and Agreements, as in the ſaid former Leaſe are comprized and ſpecified. Provided always, and the ſaid Commiſſioners do further Order and Decree, That if the ſaid *B. F.* ſhall not come in and ſubmit himſelf to this preſent Order and Decree, and ſurrender up the ſaid old Leaſe ſo made to the ſaid *L. R.* for 40 years, and by this Decree, fruſtrated and declared void, and deſire to have the preferment to take ſuch new Leaſe within one month next after, ſhe ſhall be ſerved with a Writ of Execution of this Decree; That then the ſaid *B. F.* and all claiming under him, or under the ſaid *L. R.* ſhall quit, deliver, and yield up the poſſeſſion of the Premiſſes ſo aſſigned unto him the ſaid *L. R.* as is aforeſaid, to the Feoffees of the ſame Premiſſes: And that then the ſaid Feoffees ſhall grant a Leaſe of the ſame Houſes, in ſuch manner as is herein after mentioned. And in caſe the ſaid now Feoffees of the Premiſſes, ſhall refuſe to perform the Decree on their parts, or ſhall be negligent in the performance thereof; then, and in ſuch caſe, We the ſaid Commiſſioners do order, adjudge, and decree, That the ſaid now Feoffees of the Premiſſes, and the Survivors of them, ſhall, upon demand, make a new Feoffment, or ſuch other Conveyance, as by Councel Learned ſhall be adviſed, of all the ſaid Meſſuages and Premiſſes in *L.* aforeſaid, whereof they ſtand ſeized to the Charitable Uſes aforeſaid, unto *A. B. C. D. E.* &c. being honeſt and ſubſtantial Inhabitants of the ſaid Town of *P.* aforeſaid, and to their Heirs and Aſſigns for ever, to the uſe of them and their Heirs and Aſſigns in Truſt, to, and for the Uſes, Intents and Purpoſes in the ſaid Will of the ſaid *F. F.* for that purpoſe mentioned and expreſſed: And that the ſaid new Feoffees after the time, they ſhall be lawfully ſtated and inveſted in the Premiſſes, ſhall perform this preſent Order, Judgement, and Decree, according to the true intent and meaning thereof. And the ſaid Commiſſioners do further order, adjudge, and decree, That in every Leaſe hereafter to be made of the ſaid Houſes, and Premiſſes in *L.* aforeſaid, or any of them, by the Feoffees of the Premiſſes for the time being, there ſhall be reſerved the true yearly value thereof, and that the ſame ſhall be thereby made payable to the

the Feoffees (ſo making the ſaid Leaſe) their Heirs and Aſſigns, to, and for the Charitable Uſes in the Will of the ſaid *F. J.* mentioned and expreſſed in the ſaid Leaſes: And that no Leaſe hereafter to be made of the Premiſſes or any part thereof, ſhall be made, but in poſſeſſion, and not to exceed 21 years from the making thereof. And we the ſaid Commiſſioners do further Adjudge, and Decree, That the Rents, Iſſues, and Profits of the ſaid Houſes and Premiſſes, ſhall from henceforth be imployed in manner and form following; That is to ſay, Firſt, That the Proſecutor or Proſecutors of the ſaid Inquiſition and this Decree, ſhall be ſatisfied and paid, out of the increaſe of the Rents, Iſſues, and Profits of the ſaid Houſes the ſum of 30 l. for the Moneys by him or them diſburſed in, and about the proſecution of the ſaid Inquiſition, and this Decree. And moreover, That the Rents, Iſſues, and Profits of the ſame Premiſſes (except the ſaid 30 l.) ſhall be for ever hereafter, received by the Feoffees of the ſame Premiſſes, their Heirs and Aſſigns, and ſhall be laid out and diſpoſed of, to the *S.* and *V.* of the ſaid *S.* and to the Maſter of *C.* Colledge in *O.* for the time being, and in the repairs of the ſaid *S.* according to the proportions of the ſeveral ſums of Money by the ſaid Will of the ſaid *F. J.* limited and appointed to the ſeveral perſons and purpoſes in the ſaid Will, limited and intended reſpectively, *in witneſs*, &c.

CERTAIN

Certain Caſes adjudged upon Appeals, for the Illuſtration and Continuation of all that is ſaid in the whole Work.

CHAP. VI.

Caſe 1 Mich. 1626. *Windſor* and *Hilton*.

No Bill of Review after Lord Chancellor concerning the Commiſſioners Decree.

THomas Windſore Plaintiff, and Robert Hilton, and the Inhabitants of Farnham Deffendents, upon a Reference out of the Chancery to Sir Randolph Crew, Chief Juſtice of the Kings Bench, Sir John Waller Chief Baron, Sir William Jones, and Sir George Croke, Juſtices of the ſaid Kings Bench; Whether a Decrée made by Commiſsioners, upon the Statute of 43 Eliz. for Charitable Uſes, and Exceptions put in againſt it in Chancery, and there examined, heard, and confirmed in part, and altered in part, may now be Re-examined upon Bill of Review, as other Bills of Review upon Decrées in Chancery? It was reſolved by all thoſe Judges, that the Bill of Review is not to be allowable, but the Decrée in Chancery is concluſive, and not to be farther Examined, becauſe it takes its Authority by the Act of Parliament, which mentions but one Examination; and it is not as where a Decrée is made by the Chancelor by his ordinary Authority. And the Appeal is in the nature of a Bill of Review, and no Bill of Review doth lye after a Bill of Review, for that would be infinite vexation. And Juſtice Jones affirmed, that ſo it was upon a Decrée made upon the Statute of 37 Hen. 8. by the Major part, and confirmed by the Chancelor, which is not Re-examinable. But in ſuch a Caſe, the Party grieved, may petition the King in Parliament, and have his complaint examined, and ſo the Decrée may be Confirmed, Altered, or Annulled, which is to be final. And ſo it was Reſolved by the Judges and Kings Council Aſsiſtants in the Houſe of Peers, 20 Caroli 1. 1643. between the Poor of Eaſtham, in Eſſex, Plaintiffs of the Lady Kemp, and others Defendents, where one of the Almſmen at Eaſtham complained by Petition before the Lords in the Houſe of Peers (the King being then with his Army at Oxford) to have a Decrée made by the Lord Keeper Coventry annulled, who had altered the Commiſsioners Decrée. And the Defendents excepted that the ſaid Decrée could not be admitted without a Bill in Parliament; But upon Reference to the ſaid Judges and Council, they certified as aforeſaid, and then the Lords proceeded to examine the Lord Coventries Decree, and confirmed it, Crook 3 Part fol. 40.

Relief from King and Lords in Parliament.

Caſe 2. Mich. 44. Eliz.

The Caſe is in Baron *Wilds* Miſſ. *fol.* 271.

EGerton, Popham, Anderſon and Cook, Attorney-General, reſolved theſe queſtions upon the ſaid Statute:

1 That

1. That the Biſhop of the Dioceſs, if there be any, at the time of the ſealing of the Commiſsion, ought, by the expreſs words of the ſaid Statute, to be named a Commiſsioner, or otherwiſe the Commiſsion is void: but if he be named a Commiſsioner, it is not requiſite that he ſhould be preſent at the execution of it, for that none is of the Quorum; but any four or more of the Commiſsioners named, may execute the ſame without the preſence of the Biſhop or his Chancellor. If the See of the Biſhop be void at the ſealing of the Commiſsion, then the Biſhop need not to be named a Commiſsioner, neither his Chancellor, and the Metropolitan ſhall not be named inſtead of the Biſhop, for that he is not Biſhop of the Dioceſs. And if the Biſhop be named a Commiſsioner, and dye before the Certificate returned, this doth not avoid the Commiſsion, but the other Commiſsioners may proceed. Who muſt be Commiſsioners. Biſhop.

2. If a Leaſe or Conveyance be made by parties truſted with a Charitable Uſe, whereby the ſame is defrauded, the Commiſsioners may Decree the ſame Leaſe and Conveyance to be void. And upon ſuch Decree, the ſame is void in Intereſt and Eſtate. And if afterwards upon an Appeal, the Lord Keeper adnull the Commiſsioners Decree, or decree the Leaſe or Conveyance to be good, it is then revived and made good again in Intereſt and Eſtate. And if ſuch Leaſe or Conveyance be aſsigned over to any, the Commiſsioners may decree the Aſsignment to be void, although the firſt Conveyance was made fraudulently, and in deceipt of the Charitable Uſe. Power of the Commiſsioners. To avoid an Eſtate.

3. If Houſes given to Charitable Uſes be ſuffered to be ruinous and out of repair by negligence, the Commiſsioners may decree, That thoſe which receive the Rents and Profits of them, ſhall repair the ſame, although they have otherwiſe expended the Rents in performance of the Charitable Uſe, and may order the Houſes to be ever after kept in good repair, as often as need requires. And if they which ought to repair the ſaid Houſes be dead, before the Commiſsioners Decree; the Commiſsioners may order, that their Heirs, Executors, or Adminiſtrators, having Aſſetts in Law or Equity, ſhall repair the ſame. Power of the Commiſsioners. To order repair of decayd Houſes.

4. That the word given in the Statute, extends to Gifts after the Statute, as well as to Gifts before, Statute expound.

5. The Commiſsioners cannot by their Decree make a Corporation, not before incorporated, and enable them to take to Charitable Uſes as a Corporation. As Church-Wardens which are a Corporation in Law, but to ſpecial purpoſes. Power of Commiſsioners.

But they may decree Lands held in Capite, or in Soccage, to a Corporation already incorporate, to be Truſtees, to perform a Charitable Uſe, and it ſhall be no Mortmain. To make a Corporation.

Alſo they may Decree Lands given to Charitable Uſes, to ſundry perſons, and their Heirs, to the ſaid Uſes, and enable them to demiſe the ſame Lands for the beſt profit of the ſaid Charitable Uſe; and that when ſuch a number of them dye, the Sur- Power of Commiſsioners. To enable a Grant.

Survivors shall make a Conveyance to settle the said Lands in themselves that survive, and others to make up and continue the number by them appointed.

Power of Commissioners. To order out of their County.

6. If Lands that lye in the body of a County be given to a Corporation, to maintain Charitable Uses, the Commissioners of the County may make Orders to reform the breaches of Trusts, and mis-imployment of such Lands by the Corporation.

Case 3. Trin. 9 *Caroli*, 1. *East-Greensteds* Case.

These Points were resolved by the Lord Coventry.

Power of Commissioners. To order out of their County.

1. That whereas Robert, Earl of Dorset, had granted a Rent-Charge of 330 l. per ann. out of divers his Mannors and Lands in London, and several Counties, for maintainance of an Alms-house in East-greensted, erected by himself. First, That if a Rent be granted out of Lands in several Counties for maintainance of Charitable Uses in one County, the Commissioners in that County, where the Charitable Use is to be performed, may make a Decree to charge the Lands in other Counties, to pay an equal Contribution of charge in payment of the said Rent, and there needs not several Inquisitions in each County, for that the Rent is an entire Grant, by the Deed or Will.

Rent not extinguished.

2. If the Devisees of a Rent-charge, or the Grantees thereof to a Charitable Use, do purchase part of the Lands, out of which the Rent is issuing, or all the Land: although in extremity of Law, the Rent-charge is extinguished, yet if the Commissioners decree the Rent to be revived, and settle it upon others to maintain the Charitable Use, the Rent is revived by the said Decree.

Charitable Use goes with the Land.

3. If a Rent-charge be granted out of Land to a Charitable Use, and the Land is afterwards sold for valuable consideration of Money or Land, to one that had no notice of the Rent, yet the Rent remaineth. For that the purchase was of another thing, that was not given to the Charitable Use.

Notice to be given to parties interessed, of the Commission to be executed.

Decree good without it.

4. By the Statute, the parties interessed are to have notice from the Commissioners, of the time and place of their sitting to execute the Commission. Yet if the Commissioners make a Decree, without giving such notice to the parties interessed, it is good. And if the parties upon their Appeal do take exception, that they had not any notice of the time of the executing of the Commission from the Commissioners, that shall not avoid the Decree, unless they shew withal, in their exception, that for lack of such notice, they lost the benefit of such an Exception, to the Commissioners or some of them, or of such a challenge to a Juror, expressing the cause in certain: and if the Lord Keeper adjudge the Cause shewn, to be a sufficient Exception and Challenge, the Decree, or Orders of the Commissioners shall be adnulled and reversed without fur-

out further examination, for the intent of such notice to be given, is, That the parties interessed, may make their lawful challenges to the Commissioners or Jurors, as the Statute alloweth them.

5. Resolved, That the notice which a Purchasor of Lands given to Charitable Uses ought to have; ought to be certain, and a general notice is not sufficient. As if Land given to Charitable Uses, be intended to be sold by Act of Parliament: And when the Bill is read in the House of Parliament, it is there spoken unto and declared, that the Land is chargeable with a Charitable Use, and recompense is offered otherwise to assure the Charitable Use than by that Land, and afterwards the Bill doth not pass, and the Land is sold to one of the Members of the House that spake unto the Bill for Money; Yet this notice in Parliament, is not sufficient notice, within the intent of the Statute, because it was not known to such a Purchasor, but as a Parliament-man in another capacity. Notice to a Purchasor of the Land of the Use. How to be given.

6. If a purchasor of Land given to Charitable Uses, for consideration of Money, hath legal notice of the Use, and afterwards selleth the Land to another for Money, who hath no notice of the Use; This second purchasor shall hold the Land chargeable with the Charitable Use, for that the first purchasor held it so, and the second purchasor coming under his Title, must hold it subject to the Charges the first purchasor held it, for that he claims under him; But if the first purchasor had no notice of the Use, then is the Land discharged of the Charitable Use: and if he afterwards sell it to another for Money, that hath notice of the Use, yet he shall not hold it subject to the Charitable Use, for that the Land was discharged thereof upon the first Purchase. Purchasors notice. This Use will go with the Land.

7. That if a Rent-charge be granted to a Charitable Use, out of Lands in several Counties, the Commissioners are to charge this Rent by their Decree, upon all the Lands in every County, according to an equal distribution, having regard to the yearly value of all the Lands chargeable with the Rent, and cannot by their Decree charge one or two Mannors with all the Rent, and discharge the residue in other Counties or places, for that their Decree will then be contrary to the Will of Founders or Donors. How a Rent out of Land is to be laid. Power of the Commissioners.

Case 4. 16 Martii, 4 *Caroli.*

BEtwixt the Poor of Walthamstow in Essex, and upon a Devise of Money by one Colby, to relieve the Poor there: these Points were resolved: First, S. took exception upon his Appeal in Chancery, That he had no notice of the time and place of the execution of the Commission from the Commissioners, whereby he lost the benefit of his challenge to some of the Jurors that were Inhabitants in Walthamstow, as being par- Notice to parties interessed of the Commission.

ties interested; and upon proof it appeared, that the number of eighteen were sworn upon the Jury, whereof three of them were substantial Men of Walthamstow, and none of the Poor there to take benefit by the Gift; and the Lord Keeper disallowed the Exception, for that it appeared, fifteen others were of the Jury, against whom no Exception is taken, and a Verdict of twelve or more, is good; although others of the Jury, above the number of twelve dissent; also the three Inhabitants were no parties interested in the Gift, and may be Jury-men, they being none of the poor of the said Parish. Secondly, if one be authorized, by a party subject to the Decree of the Commissioners for a Charitable Use, as a Counsellor, Sollicor, or Attorney, to sollicite or defend his Suits, and notice is given to his Attorney, Counsellor, or Sollicitor, by the Commissioners of the time and place for execution of the Commission against the person so entertaining him, telling and advising him to acquaint the party interested therewith, and giveth him timely notice to acquaint him accordingly; and at the time and place of meeting, neither the party interested, nor any other, cometh to make defence and challenge, if the Commissioners proceed to enquire and make a Decree, it is good, and the notice to his Clients is sufficient: and in the Case of S. it was proved, that he was an aged man, and not able to follow his own business, dwelling in a remote County, and that he had a Son a Counsellor at Law, who attended his Fathers business in other things, unto whom the Commissioners gave notice of the time and place for executing the Commission, and that he might have given his Father timely notice of it, and it was taken as a neglect of purpose to avoid the Commission. Also it was proved, that the Father had personal notice of the time and place appointed by the Commissioners to make the Decree, and his Son came to attend it, but did not take any Exception to the Jurors; And the Lord Keeper said, That notice was sufficient, although he had no notice of the Inquiry.

Who chargeable for the Profits of Lands to *Charitable Uses.*

Thirdly, if one Devise Money to a Charitable Use for relief of the Poor, and makes two Executors, and dies, and they prove the Will, and joyntly intermeddles with the receipt of Money, and one trusts the other with the Money given to perform the Charitable Use, and to pay it accordingly, and he wastes it, and dies insolvent, the surviving Executor shall be charged to pay the Money for the Charitable Use, if the Testator left Assets to pay it, for that they joyntly medled in the execution of the Will; but if the Executor that died, had only proved the Will in the name of both Executors, and the surviving Executor never medled in the execution of the Will, but left all to the other, and he had wasted the Estate, and died insolvent, the surviving Executor shall not be charged with the Charitable Use, out of his own Estate, for that the other Executor had a joynt Authority, with him, from the Testator, and

Executors how chargeable.

he

he would not prevent his intermedling, and the Surbidor had no other means to prevent his charge, than by his refusal.

Lastly, If Money be given to a Charitable Use by Will, and the Executors detain it in their hands many years, without imploying it according to the Will, having Assetts, the Commissioners may Decree the Money with damages for detaining of it, to be imployed in the Charitable Use, according to their discretion, not exceeding 8 l. per Cent. for a year, for the damages. Power of Commissioners. To give Damages.

Case 5. *Mich.* 10 *Car. int.* Inhabitants of *Eltham* in *Kent*, against *Warreyn*.

The Case was thus: Land was given the time of Hen. 8. being then of the value of 3 l. per ann. to the Parishioners of Eltham, to repair the high-ways there, this Land doth improve to be of the value of 11 l. per ann. divers of the parishioners being Vestry-men there, do Demise this Land, and House upon it, to Warreyn for fifty years, at 3 l. Rent per ann. Warreyn cuts down Timber-trees, growing upon the Land, and repairs the House with part, and sells, and otherwise disposeth of the residue, and pays the 3 l. Rent yearly, which is bestowed in repair of the high-ways; The Commissioners decree Warreyn to pay Damages for cutting down these Trees, and that his Lease should be void, and surrendred up to be cancelled, and to pay the surplusage of the true value of the Land, as it was improved at the time of the Lease for the time he enjoyed it, and that divers of the parishioners, naming them particularly, should be Trustees to the said Land, for the best profit of the Charitable Use, and that such a number should enfeoff others of the parishioners, to continue the number of the Trustees, by the Decree appointed. And upon Warreyns Appeal to the Lord Keeper, the Decree of the Commissioners was confirmed in all things, and resolved, 1. That the cutting down of the Trees was a waste, for which Warreyn should pay Damages, according to the value of them; and bestowing but part upon the House, not being able to prove the quantity, it was fraud in him, to colour his disposing the residue otherwise; but if he had bestowed all, or the greatest part of the Trees in the repair, it had bin no waste. 2. It was resolved that Commissioners may give Costs to the party which prosecutes a Commission, to reform a breach of Trust in a Charitable Use, and the Lord Keeper may increase these Costs, if the party griebed complain without cause. 3. The Lease being made at an under value, is a breach of Trust, and Fraud, to deceive the Charitable Use of the true value of the Land: And the Commissioners may decree the Lease to be void and surrendred; and that the Lessee shall pay the true profits of the value of the Charitable Use above the Rent reserved. How Profits improved of the Land, is to be ordered. Power of Commissioners. To order repair of decayed Houses. To give Costs. To make void a Lease.

And laſtly, the Commiſsioners may, by their Decrée, inable perſons as Truſtées, to have intereſt in the Lands given to Charitable Uſes, and to Demiſe the ſame accoꝛding to the improved value.

Caſe 6. In the Caſe of *Sutton Colefield in Com. War.* Hill. 11 *Car.*

Power of Commiſſioners

FIrſt, it was reſolved, That it is not material that the Commiſsioners which were preſent at the time the evidence was given, and of the taking of the Inquiſition, be preſent at the making of the Decrée; foꝛ if any, oꝛ all of them are abſent at the time of the making of the Decree, which were preſent at the time of the taking of the Inquiſition and Evidence, the decrée is good, if it be made by four Commiſsioners, oꝛ moꝛe. And if it appears by the Return, That the names of four Commiſsioners were affixed to the Inquiſition, and four other Commiſsioners to the Decrée, all is good.

To make the Decree.

Though not preſent at the taking of the *Inquiſition.*

Secondly, Reſolved, If Lands of the value of 3 l. per ann. be given to maintain a School-maſter; and, in the Deed, it is expreſſed, That the ſaid 3 l. ſhall be only imployed to maintain that Uſe, and no other Uſe is expreſſed in the Deed; and afterwards the Land increaſeth to a greater value, all the increaſed Rent ſhall be imployed foꝛ maintainance of that Charitable Uſe, becauſe it doth not appear, that the Donoꝛ had any intention that the Pꝛofits of his Land ſhould be imployed to any other uſe; and at the firſt he gave ſo much as the Land was woꝛth.

To diſpoſe of the improvement.

Thirdly, Reſolved, If Land given to Charitable Uſe, be ſold foꝛ Money to one that hath notice of the Uſe, this notice did make the Land Charitable with the Uſe in all other Purchaſoꝛs hands, although the other Purchaſoꝛs had no notice of the Uſe, becauſe they take the Land charged with other incumbꝛances as the firſt Purchaſoꝛ held; but if the firſt Purchaſoꝛ had no notice of the Uſe, then is the Land diſcharged of the Uſe, and it ſhall ſo remain in all the Purchaſoꝛs hands, although they had notice of the Uſe.

Land charged with the Uſe in the hands of Purchaſors.

Fourthly, Reſolved, If Land of the value of 3 l. per ann. is given to a Charitable Uſe, which is paid accoꝛdingly, and afterwards the Land increaſeth to a better yearly value; if the increaſed value be not alſo paid to the Charitable Uſe, that is bꝛeach of Truſt, which the Commiſsioners may reſoꝛm, if no other uſe of imployment of the Rebenue be expꝛeſſed in the Donoꝛs Deed,

Breach of Truſt.

Improvement.

Fifthly, Reſolved, If Land be given to a Coꝛpoꝛation, oꝛ other particular perſons to perfoꝛm a Charitable Uſe, and the Donoꝛ appoint them Viſitoꝛs alſo of the Uſe accoꝛding to his intent, if the ſaid Viſitoꝛs do bꝛeak the Truſt, either in detaining part of the Rebenue, miſimploying, oꝛ any other ways defrauding the Charitable Uſe; this may be reſtoꝛed by Decrée of the Commiſsioners, notwithſtanding the Statute of 42 Eliz.

Power of Commiſſioners. Over Viſitors and Truſtees.

which

which disables Commissioners to meddle with Lands given to Charitable Uses, where special Visitors are appointed, for the intent of the Statute is to disable Commissioners to meddle with such a Case, where the Land is given to persons in Trust, to perform a Charitable Use, and the Donor appoint special Visitors to see these Trustees to perform the Use according to his intent, if the Trustees defraud the Trust, the Commissioners cannot meddle, but the Visitors are to perform it; but where the Visitors are Trustees also, there the Commissioners may by their Decree, reform the abuse of the Charitable Use.

CASE 7. *Hynshaw* and *Pythers*, and the Mayor of the Corporation of *Morpeth* in *Northumberland*. 5 *Car.*

KIng Edw. the VI. gives Land to the Mayor and Commonalty of Morpeth, of the value of 20 l. per ann. to maintain a Schoolmaster there, and appoints them Visitors of the School-Master and Scholars, that they behave themselves according to his Orders, this Land increaseth to a 100 l. per ann. and the Corporation did only bestow on the School-master the 20 l. per ann. according to the value at the time of the first Gift. A Commission is granted to reform this breach of Trust, and the Corporation upon Summons refused to appear before the Commissioners, for that they are appointed Visitors, and the Proviso of the Statute doth exempt in such Cases the power of the Commissioners: The Commissioners certify this to the Lord Keeper, and that the Visitors were the persons trusted, and did break the Trust: And Serjeant Thomas Crew moving the Lord Keeper upon this Certificate the 22 of May 5 Car. the Lord Keeper declared his opinion to be, That the Commissioners might proceed in the execution of their Commission; for the Visitors being Trustees, and Parties breaking the Trusts, are not within the intent of the Proviso; and if it should be otherwise construed, this breach of Trust would escape unpunished, unless in Chancery or in Parliament; which were a tedious and chargeable Suit for poor persons. And the Lord Keeper said, That the not bestowing of the increased value of the Land given, was a breach of Trust in the Corporation, if no other Use be expressed in the Letters Patents. Also it was then said, If Land be given to maintain a Charitable Use, for relief of Poor; and also that the Schoolmaster, or Poor, shall pray for the Donors Soul, that the Charitable Use shall be said; the principal intent of the Donor, and the praying for his Soul, but an accessary, and therefore the Charitable Use shall support and preserve the Land.

Power of Commissioners over Visitors. *infra* 124 172

Improvement of the Land.

CASE

CASE 8. The Case of the Inhabitants of *Woodford* in *Essex*, against *Parkhurst*; Hill. 14. *Carol.*

SIr Henry Leigh did purchase Coppy-hold Lands in Woodford, in the name of two of his younger Sons, and their heirs, they being within age, and by his Will, Deviseth to Sir William Martin, and other Parishioners of Woodford, and their heirs, a Rent-charge of 40 *s.* per ann. out of this Coppy-hold Land, for relief of the Poor there, and Dyes: Sir William Martin purchaseth this Land, and enjoys it for many years, and then sells the Land unto Parkhurst and his heirs; Parkhurst hath notice of the Charitable Use: between the Surrender and his admittance, the Commissioners decree Parkhurst to pay all the Arrearages since Sir Henry Leigh's death; and upon his Appeal, the Lord Keeper resolved these Points: First, That the Rent is well devised, although Sir Henry had nothing in the Land in strictness of Law, for that the Estate in Law, was in the Children, yet Sir Henry making the Purchase, and enjoying the Land as owner, and receiving the Profits of it, he shall be said, in Equity, to have power to dispose to a Charitable Use. Also it being objected, That there wanted a Surrender to enable him to Devise, the Lord Keeper said, yet the Devise was good enough, and shall be said a good Gift, limitation, and appointment within the Statute, in favour of Charitable Uses. Secondly, resolved, That the Rent, although it was extinct in Law, by Sir William Martins purchase, yet by the Commissioners Decree it is revived. Thirdly, Resolved, the Rent is not extinct by this Purchase, although he had no notice of the same, for that the Purchase is of another thing than was given to the Charitable Use. Fourthly, Resolved, That the Rent is a charge which goes with the Land, in whose hands soever it comes, and a Distress may be taken for the arrearages, upon the Terr-Tenant, for the time it was arrear in others hands, and the owners remedy, to have contribution against all others that enjoyed the Land before him, is by Suit in Chancery; And here Parkhurst, by the Decree, had Contribution against all others that enjoyed the Land charged, and suffered arrearages to accrue in their time. Lastly, Resolved, That the notice of the Rent given to Parkhurst, after the surrender and agreement for the Purchaser, and before his admittance, was a sufficient notice within the Statute; if notice in this Case had been requisite, for that Parkhurst was no compleat and absolute Purchaser before admittance, so of notice given to a Purchaser, of a Charitable Use, chargeable upon the Land, mean between his agreement, and sealing of the Writings, before the perfecting of the setling of the Estate in him, by Attornment, Livery, or Inrollment of the Deed of Conveyance.

Rent not extinct.

Charge continue on the Purchasor.

Notice to be given to a Purchasor of the Land charged.

CASE

CASE 9. *Kennington Haſtings* in Com. *War.* 9. *Jac.*

ONe Humphrey Davis erected an Alms-houſe in Kennington Haſtings, for eight poor Men, and being ſeized of Lands in Tennington, Monton, and Burbery, then Lett for 10 l. Rent per ann. doth deviſe the Rents of his ſaid Lands, for maintainance of the ſaid Poor in the ſaid Alms-houſe, and dyes, his Heir pays the 10 l. yearly for maintainance of the Poor at the Alms-houſe, and at the end of the term, doth Demiſe the Land at 40 l. per ann. The Commiſsioners do Decree the whole Land for maintainance of the Charitable Uſe, and the Arrearages of the improved Rent taken by the Heir, from the time of the expiration of the old Leaſe, until the Decree, and that the new Leaſe ſhall be void, and ſurrendred; and upon the Heirs Appeal in Chancery, and Exceptions taken to the Decree, the Lord Keeper referred the Caſe to the Judges principally, Whether if one Deviſe the Rents of his Land to a Charitable Uſe, if by this Deviſe, the Land paſſed? and they certified their opinions, That by Deviſe of the Rents of the Lands to a Charitable Uſe, the Land it ſelf did paſs. And in 12 Jac. in the Caſe of one Kerry and Dethick, it was adjudged, That if one Deviſe to another and his Heirs, the Rents and Profits of his Lands, that this is a Deviſe of the Land it ſelf. Alſo they Reſolved, That when one Deviſeth the Rent of his Land to a Charitable Uſe, it ſhall be taken largely for a Deviſe of the Rent then reſerved, or afterwards to be reſerved upon an improved value. And the Lord Keeper did afterwards confirm the Commiſsioners Decree in all things.

Power of Commiſsioners.

In an Improvement.

Deviſe.

CASE 10. The School of *Thetford*'s Caſe upon a Bill exhibited in Parliament, 8 *Jac.* 8 *Coke* fol. 130.

LAnd of the value of 35 l. by the year, was, by Sir Thomas Fulmerſton 9 Eliz. Deviſed to certin perſons in Truſt, and their Heirs, for maintainance of a Preacher, Schoolmaſter, and poor People, in Thetford, and by the Will, a ſpecial diſtribution was made, how much the Preacher, Schoolmaſter, and Poor ſhould have, amounting in the whole unto 35 l. by the year, which was the value of the Land at the time of the Deviſe, and afterwards the Land increaſeth to be by the value of 100 l. by the year, and upon a Reference to the Chief Juſtices, and Judge Walmſley, they certified their opinions, that the Revenue of the Lands ſhall be imployed to increaſe the ſeveral ſtipends of the perſons appointed to be maintained by the Deviſor, and if any ſurpluſage do remain, it ſhall be imployed for the maintainance of a great number of people, and nothing ſhall be converted by the Deviſees, to their own uſe, for that it appeareth by the diſtribution of the Deviſor, that he intend-

Deviſe of a *Charitable Uſe.*

How taken.

Improvement how to be disposed.

intended that all the Profits of his Lands, shall be imployed in the Charitable Works by him Founded, and left nothing to his Heirs or Executors, of the Profits of his Lands, as they were in value at his death, and as if the value of the Lands had decreased, the Poor should have lost in their stipends, so when the Revenue of the Lands increase, they shall gain; and the Lord Coke said, That this Resolution did concern all the Colledges in the Universities, and elsewhere; for when the Lands were first given for their maintainance, and that every Scholar should have a Penny-halfepenny a day, this was then a competent allowance for a Scholar, in respect of the price of Victuals then, and yearly value of the Land, and now the price of Victuals being increased, the first maintainance for Scholars, is not competent for them; and as the value of the Lands increase, so ought the Allowance for the Scholars to increase; for the Colledges seized in Jure Collegii, to the intent, that the Members of the Colledge shall be maintained, according to the intent of the Founder, which is, that all the Revenue and Increase of the Profits of their Lands, shall be bestowed in the Works of Charity, which the Founder hath expressed, and that nothing should be committed to any other private uses, for panis egentum est vita pauperum, & qui defraudat eos homo sanguinis est, and upon conference with all the Judges of England, they agreed to the Opinion of both the aforesaid Judges, and both Houses of Parliament passed the Bill accordingly, and the King assented to the Bill.

CASE. 11.

Thing in action given to Charitable Uses.

IN Mich. 12. Jac. in Chancery, The Case was; Anne the Wife of Sir Henry Billingsley, was before the Wife of one Martin, and Administratrix of his Goods, and there was due to Martin 1800l. debt by a Statute-Merchant, acknowledged by one Southwel. Dame Anne made her Will in the life of Henry, and thereby appointed, out of this Debt, divers particular Legacies to her kindred, and after, also 400 l. to Charitable Uses; with this Proviso, That if there should arise any cross in Law, or loss in the said Debt of 1800l. her meaning was, that it should fall upon the last 900l. mentioned before the Proviso: And of this 900l. the 400 l. for Charitable Uses was a part, and the last.

Decreed.

Raised by an imperfect Devise.

Dame Anne dyed a Feme-Covert: Peacock and Peacock her Executors refused to intermeddle with the Debt, because she had it but as Administratrix, and could make no Will of it; and also because it was a thing in Action. And thereupon the Administration of the Goods, not administred of Martin, the first Husband of Dame Billingsley, was committed to Damus and others. And thereby they had debts of 2000l. besides the 1800 l. upon the Statute. And hereupon an Inquisition was taken

taken upon a commiſsion of Charitable Uſes, directed to Altham, Baron of the Exchequer, and others in London, and a Decrée made for the maintainance of the Charitable Uſes. And Exceptions taken to it by the Adminiſtrators. 1. For that her Will was void. 2. For that the 2000 l. debt, was a deſperate debt, 3. There was a Croſs and much Money ſpent in it. But the Decrée of the Commiſsioners was affirmed by the Lord Chancellor. For firſt, albeit the Will of the Lady were void in Law, yet it was good; yet it will ſerve for a Declaration upon the Statute for Charitable Uſes; ſo that if there be Aſſetts of that Eſtate, or of his own Eſtate that is to execute it, the Uſe ſhall be ſupported; for the Goods in the hands of Adminiſtrators, are all to go, and be imployed to Charitable Uſes, and Kindred and Children can have no property nor preheminence in them, but under the Charity of the Ordinary. 2. It was confeſt, that when the Decrée was made by the Commiſsioners, the Eſtate would have born it, and there was Aſſetts; and therefore there was negligence in the management of the Eſtate. Whereupon Damus was compelled to pay the 400 l. to the Charitable Uſes, and to take the help of the Court, for retobery of the Debts of the Inteſtate. *Moors* Rep. Caſe 1111. *Damus* Caſe.

CASE 12.

JOhn Colliſon, 1 April 1534. in 25 H. 8. being ſeized in his Demeſne, as of Fee, of a Meſſuage in Popeſtreet, with all the Lands thereunto belonging in Eltham, in the County of Kent, the ſame Meſſuage and Land not being deviſable by any cuſtom, nor Eſtated in uſe to any; but be thereof ſeiſed in poſſeſsion, did make his laſt Will and Teſtament in Writing, in theſe words. In B. *Wilder* Reports. fol. 285, & 372.

I bequeath to *Lettice* my Wife, my Houſe in *Popeſtreet*, with all the Lands thereto belonging, during her life; and after her deceaſe, I make *John Brecket*, *John Willeden*, *Henry Steevenſon*, and *Ralph Bride*, Feoffees in the ſaid Houſe and Land, to ſee the ſame kept in ſufficient reparations. And the reſt of the Profits of the ſame Rents, after the diſcretion of the ſaid Feoffees, to be beſtowed yearly upon the Reparation of the High-way between *Wyel-Elm* and the Town, and between *Neuſted-Croſs* and the Town, where moſt need is, or ſhall be. *Charitable Uſe* raiſed by a defective Will.

John Colliſon and Lettice his Wife, being both dead, the Commiſsioners in Kent, upon the Statute of 43 Eliz. for Charitable Uſes, made a Decrée for the imployment of the Profits of the Lands, upon the repair of the ſaid Way; which Decrée was 13 July. 13 Jac.

The Queſtion was.

Forasmuch as this Will was made before the Statute of 32 H. 8. and the Land not in uſe; Whether it ſhall be ſaid, a

Limitation, Appointment, or Aſsignment, within 43 Eliz. to warrant the Decrée.

The Caſe was referred to the two Chief Juſtices, Mountague and Hobart, who having heard Counſel on both ſides at Serjeants Inn, did certify the Lord Chancellor, 3 Junii, 1617. in theſe words:

May it pleaſe your Lordſhip, We have conſidered of the Caſe hereunto annexed, according to an Order of the 25 of *April* laſt, in the preſence of Council Learned of both Parties. And we are of opinion, that the intended Deviſe made by the ſaid *John Colliſon*, by his Will, is a Limitation or Appointment to a *Charitable Uſe*, to be relieved by the Statute of 43 *Eliz. Cap.* 4.

Upon which Certificate, the Lord Chancellor did confirm the Decrée, notwithſtanding the Exceptions put into it by one Rolt an Infant, to whom the Land was deſcended. Moors Rep. Caſe 1251. Rolt's Caſe.

CASE 13. Sir *Thomas Middleton's* Caſe, 1590.

Money abated of Soldiers wages.

B. *Wildes* Reports fol. 286.

SOldiers and Mariners, by a voluntary Contribution amongſt themſelves, abate, out of their Wages of 6 s. a month, 4 d. by the month; and he which taketh 5 s. by the month, 3 d. by the month, and appoints this to be paid to Sir Thomas Middleton, to the intent that he ſhall imploy it for relief of maimed Soldiers and Mariners, upon the Seas, their Wives and Children, and Sir Thomas receives, by this appointment, 400 l. which he keeps in his hands about 20 years. This voluntary Contribution was made by the Mariners and Soldiers attending Sir Francis Drake, and Sir John Hawkins, in their Voyages to the Weſt Indies, upon a Commiſsion upon the Statute of Charitable Uſes; this voluntary Agrément and Conſtitution of the Soldiers and Mariners, was proved before them, and that Sir Thomas Middleton had received, by reaſon thereof, 400 l. which he had detained in his hands 20 years. The Commiſsioners make a Decrée for payment of the ſaid Money, with ſome Damages; and upon Appeal to the Lord Keeper, he confirmed this Decrée. Moors Rep. Caſe 1152.

Power of Commiſsioners.

To give damage.

CASE. 14. *Rivetts* Caſe. 15 *Jac.*

Copyhold given to this uſe.

A Copy-holder of Land in Fée, Deviſeth the ſame to a Charitable Uſe, without a Surrender, Commiſsioners make a Decrée for the Land, and, upon Appeal, the Decrée was confirmed; for although it be a void Deviſe by the Common Law, yet it is a good Limitation and Appointment of Land to a Charitable Uſe, and it ſhall bind the Heir, but not the Lord for his Fine.

This Deviſe was made unto the Deviſors Son and Heir, and his Heirs, upon condition, that he and his Heirs ſhould imploy the Profits of the Land, for the relief of Stow-Market

in

in Suffolk, and after the Deviſor dyed, without a Surrender to the uſe of his Will. In 6 Jac. the Heir having ſold the Land to one Flick for valuable conſideration of Money, ſues out a Commiſsion upon the Statute of Charitable Uſes, by Fraud and Cobin, betwæn him and Flick, to diſcharge this Land of the Charitable Uſe; upon which Commiſsion it was proved before the Commiſsioners, that Flick had any notice of this Charitable Uſe; but it was proved, that the Heir that ſold the Land, had Aſſetts, both in Law and Equity, to give allowance out of his Eſtate, to maintain this Charitable Uſe: Whereupon the Commiſsioners Decreed, That the Son and Heir, ſhould grant out of his own Land, the ſum of five Marks, and to maintain this Charitable Uſe; it being then proved, that the Land Deviſed for the Charitable Uſe, was of no great value; And they further Decree, that Flick ſhould hold his Land diſcharged of the Charitable Uſe: and this Decree being certified into the Chancery, and proſecuted by the Heir and Flick, with intent to diſcharge the Land Deviſed, of the Charitable Uſe, the Lord Keeper confirmed it: Afterwards the Pariſhioners of Stow-Market having notice of this Fraud, and that the Land Deviſed, was worth 7 l. 10 s. per ann. they, in 14 Jac. ſue out another Commiſsion upon the ſaid Statute; and before the Commiſsioners it was proved, that Flick had notice of this Charitable Uſe, before he bought the Land. Secondly, it was proved, that the firſt Commiſsion was ſued out by Fraud and Combination betwæn the Heir and Flick, on purpoſe to diſcharge the Land Deviſed of this Charitable Uſe. Thirdly, it was proved, That the Land Deviſed, was worth 7 l. 10 s. per ann. And fourthly, that the Heir had not paid the five Marks, decreed by the former Commiſsion to be paid; upon all which proofs, the latter Commiſsioners Decree Flicks Land for maintainance of the Charitable Uſe appointed; and the Jury having found the former Commiſsion to be proſecuted by Fraud and Combination, as aforeſaid, they Decree that Flick ſhall pay the full value of his Land by the year to the Charitable Uſe, from the time of his Purchaſe. And laſtly, they Decree, that the Heir that ought to have paid the five Marks per ann. for divers years, and hath not paid it at any time, ſhould pay the Arrearages, and then his Land to be diſcharged from further payment of it. This latter Decree being certified in the Chancery, Flick took exception, that the ſecond Commiſsion iſſued out illegally, there having bæn a former Commiſsion and Decree, to diſcharge the Land of the Charitable Uſe, which was confirmed by Decree of this Court, which ought to be Final, and is not to be reverſed but in Parliament, according to Andrew Hynſtors Caſe before; and if a Commiſsion upon a Commiſsion ſhould iſſue out upon this Statute, ſuch multiplicity of Suits would ariſe, as that it would prove inconvenient, and multiplicity of Suits is not allowed in Law: But the Lord Keeper did con-

Commiſsion ſued out of Fraud to void the Uſe.

firm

firm the ſecond Decree, becauſe of the Fraud and Combination between the Heir and Flick, in ſuing out the firſt Commiſſion, which was found by the Jury, and proved before the Lord Keeper; and therefore he now reverſed the firſt Decree, and confirmed this; for that by the Law; Fraus & dolus nemini patrociniam debet; but if a Decree be legally made without Fraud by the Commiſsioners for Charitable Uſes, and upon Appeal this is confirmed in the Chancery; and where a Decree is made by Commiſsioners for Charitable Uſes, and this Decree confirmed in Chancery, if the Decree be not performed accordingly: now no Commiſsion need be ſued out, for upon an Affidavit made of a breach of the Decree, an Attachement, and other Proceſs of courſe is to iſſue out to compell the parties concerned, to perform the Decree; yet if a ſecond Commiſsion do iſſue out, it is not illegal, if nothing be decreed againſt the firſt Decree; and upon this ſecond Commiſsion, they are to decree by form of the firſt Decree, if they find a breach. See it in *Moors Rep.* Caſe, 1153.

CASE 15. *Bernard Hide's* Caſe.

This Caſe is in B. *Wildes* Mſſ. fol. 286.

TRinity 4 Car. Bernard Hide's Caſe againſt the Pariſhioners of Gillingham, Dartford, and Sutton in Kent.

Katherine Banne grants, by Deed, a Rentſeek out of 208 Acres of Land, for relief of the Poor in thoſe Pariſhes, and limits this to commence after her death, and gives Seiſin of this in her life, the Rent is behind for 36 years, Hide purchaſeth the Land, having notice of the Charitable Uſe, and in the Grant there was a nomine pœnæ of 50 s. if the Rent be not paid by her Heirs within 14 days after it was due by the Grant, and it was found, that Hide had held the Land ſeven years; upon a Commiſsion for Charitable Uſes, the Commiſsioners Decree, that Hide ſhall pay all the Arrearages for 36 years, and alſo the Arrearages of the nomine pœnæ for 7 years, being the time he had enjoyed the Land, and decree that the Grantor ſhall diſtrain for the Rent for ever after. And the Commiſsioners Decree being returned in Chancery, the Lord Keeper referred it to the Judges, who reſolved theſe points:

Power of the Commiſſioners.

To order pay of Arrears.

First, That Hide ſhould pay all the Arrearages for 36 years, for that the Land is chargeable with the Rent; in whoſe hands ſoever it cometh.

Secondly, that the Seiſin given by the Grantor in her life, is good, although the Rent did not commence, or was in eſſe at the time of the Seiſin given.

Purchaſor, how chargeable with the Uſe.

Thirdly, If Land or Rent be given to a Charitable Uſe, and miſ-imployed, a Purchaſor which hath notice of the Gift, ſhall not be further charged than during his own time; but where the Rent is concealed, a Purchaſor ſhall anſwer for all the time of the concealment, for the Land is a Debtor, & tranſit cum onere.

Fourthly,

Fourthly, If a Rent be granted out of Land to a Charitable Uſe, and one buys the Land for a valuable conſideration of Money, having no notice of the Charitable Uſe and Rent, yet the Rent remains, becauſe it is collateral to the Land, and another thing; and the notice required by the Statute is to be given, as well of the Land, as of the Charitable Uſe. Notice to be given.

Fifthly, Reſolved that the Purchaſor ſhall not pay the Arrearages of the nomine pœnæ, becauſe it was a perſonal charge upon the Heir, who ought to have paid the Rent, and it doth not charge the Land.

Sixthly, when the Heir, or others, charged to pay a Charitable Uſe, do break the Truſt, the Commiſsioners may transfer the Truſt unto others, as to the Church-wardens, or other Pariſhioners of the Pariſh, where the Charitable Uſe is to be diſtributed. Power of Commiſsioners. To transfer a Truſt.

Laſtly it was reſolved, That if a Rent-ſeck be granted to a Charitable Uſe, the Commiſsioners, by their Decree, cannot make this a Rent-charge, by adding a clauſe of Diſtreſs, unleſs it be, for that this alters the nature of the Rent in the creation of it, and is againſt the mind of the Donor. Mich. 2. Car. 1. *Thomas Windſor*, and the Inhabitants of *Farnham*, no Bill of Review, *Croke* 3 Part, fol. 40.

CASE 16. Mich. 14. Car. *Plate* and the Maſter and Fellows of S. *Johns* Colledge in *Cambridge*.

Coppyhold Land.

PLate being ſeized of Coppy-hold Land in Tail in High-Gate in Middleſex, ſurrenders this, in Court, to the uſe of his Will, and ſuffers a Recovery in the Court of the Manor, in which no Judgement is given againſt the Vouchee, and after deviſeth by his Will, this Coppyhold Land, and all his Freehold Land to his Wife, for life, the remainder to the Maſter and Fellows of S. Johns Colledge in Cambridge, for maintainance of the Scholars there; the Heir of Plate enters upon the Wife, to avoid the Deviſe, and the Maſter and Fellows prefer a Bill in Chancery to preſerve their Intereſt, and to have the Deviſe to them confirmed. The Lord Keeper, Littleton, reſolves, That if no Judgement be given againſt the Vouchee, to have in value, in caſe of a common Recovery to cut off an Eſtate-Tail, that it is a void Recovery, and will not cut off an Eſtate-Tail, And as to the Wife, to whom the Land was deviſed for life, the Heir had liberty given, by Law, to evict them: But as to the Colledge, and the remainder limited to them, the Lord Keeper did declare, That the Deviſe is good to them by the Statute 43 Eliz. touching Gifts, Limitations, and Appointments of Lands to Charitable Uſes; for there is Gift and Limitation of the Land to a Charitable Uſe, which ſhall not be avoided for want of circumſtance of Law to make it good. And alſo the Lord Keeper ſaid, That although the Deviſe to this uſe. Recovery.

Colledge

Colledge was incorporated by another name than the Devise was to them, and therefore might not be capable of it, yet the Devise is good to them by the said Statute: Also if the heir avoid the Estate-Tail against the Wife at Law, yet the remainder to the Colledge shall stand good, and be a remainder without a particular Estate, which by rules of Law cannot be; but these defects in cases of Charitable Uses, are made good by that Statute, by a benigne and favourable interpretation thereupon for maintainance of Charity; as it is in other Cases upon Statutes for Piety and Charity.

CASE 17. 13 *Jacobi*, *Jesus Colledge* Case in Court of Wards, referred to the Judges.

Devise to this Use.

DOctor Floyd seized of Lands in Capite, Deviseth them to Jesus Colledge in Oxford and their Successors, to find a Fellow there, which should be of his Bloud and Alliance; and it was referred to the Judges, whether this Devise be good or no: and they Resolved and Certified, That by the Common Law, and Statute of Wills, the Devise was void; for these Statutes enabled persons to Devise their Lands, excepting to Corporations, for that is Mortmain. Also, none can Devise all their Capite Lands to any, but must leave a third part to descend; but they certified and resolved, That although it be void by the Common-Law; yet the Statute of 43 Eliz. for Charitable Uses, doth make this good, as a Limitation and an Appointment, and that it was good for all the Land. But if an Infant or Lunatick, who, by Law, is disabled to make a Will or Devise of his Land, do devise his Land to a Charitable Use, this is void, and not made good by the Statute, for want of a capacity to make a Will by Law. Lo. Ho. 136.

CASE 18. The Lord *Edward Mountagues* Case in the Court of Wards, 17 *Jac.*

Devise to this Use.

SIr Walter Mountague seized in Fee of Capite Lands in Hanging-Houghton in Northamptonshire, conveys two parts of these Lands unto uses limited within the Statute of 32 and 34 H. 8. and by his Will deviseth the third part, remaining in him, for maintainance of a Charitable Use in Wales; and upon a Reference to Hobart and Tanfield, they resolved, this Devise to be void, and was not aided by the Statute of 43 Eliz. for Charitable Uses, for in the instant of his death, the Lands descended to the heir, and the Devisor having disposed of two parts in his life, according to the Statute of Wills, he is disabled by the Common Law, and those Statutes, as owner of the Lands, to devise any part of his third part remaining. See Doctor Floyds Case before in Jesus Colledge Case.

CASE

CASE 19. *Seymor* againſt the Poor of *Twyford*, *Trinity* 1634.

MOney was given to Charitable Uſes, and detained a long time as concealed; the Commiſsioners, upon the ſaid Statute, decreed the Money to be paid with intereſt, after the rate of 8l. per Cent. and this Decrée was confirmed by the Lord Keeper. So in the Caſe of the Lady Mountague of Ilford, and the Inhabitants of Barking in Eſſex, Sir Charles Mountague her Husband, gave, by his Will, 10l. to the Poor of Barking, and made his Wife Executrix, and died; ſhe kept the Money above twelve years in her hands, and the Commiſsioners decreed her to pay 20l. for the detaining this Money, for Uſe and Principal; and the Lord Keeper Coventry confirmed this Decrée about 12 Carol. Power of Commiſsioners. To order Damages.

CASE 20. The Poor of *Eaſt Greenſtead* againſt *Howard*, 8 *Carol.* & 10.

REſolved by the Lord Keeper upon Appeal, to alter or confirm a Decrée made by Commiſsioners upon the Statute of Charitable Uſes, the Decrée is not perpetuated, and not to be altered but by Act of Parliament, and is to remain in the Pety Bag, and it is in his power to make a Decrée good, where it is defective. Decree of the Court, alterable.

CASE 21. *Hungate* on the part of the Inhabitants of *Sherborn*, 3 *Carol.*

A Debt owing by Statute, Bond, Judgement, or Recognizance, which, in Law is, a thing in action, was given for the creation of a School, and this was decreed to be a good appointment, within the Statute, to maintain a Charitable Uſe. Thing in Action given to this Uſe.

CASE 22. *Steward* againſt *Germyn*, 41 *Eliz.*

ONe having Lands and Goods, appoints by his Will, that the ſame ſhall be ſold to maintain a Charitable Uſe; and doth not appoint by whom the ſale ſhall be made; the Commiſsioners do, by their Decrée, appoint, That J. S. ſhall ſell theſe Lands and Goods, and decrée his ſale to be good; and that the Money to be raiſed thereby, ſhall be imployed to maintain the Charitable uſe, according to the Donors Will. And this Decrée was confirmed by the Lord Keeper, upon an Appeal to him. Deviſe to this Uſe. Incertainty.

CASE

CASE 23. *Hellams* Caſe 5 *Caroli.*

Deviſe.

A Deviſe was made of Lands to the Company of Leather-ſellers in London, to maintain a Charitable Uſe there, upon a Decrée by Commiſsioners, to ſettle the Lands upon the Company, an Appeal was, and Exception taken, for that the Company of Leather-ſellers was a Corporation, and the Statutes of Wills doth except Deviſes of Land to a Corporation. But the Decrée was confirmed, there being many Preſidents in it.

Miſtaken.

CASE 24. The School of *Rugby* in the County of *Warwick*, 2 *Caroli.*

In what County the enquiry muſt be.

One ſeized in Fee of Houſes in Grays-Inn lane, London, gave theſe Houſes to certain perſons in Truſt, to build a School at Rugby in the County of Warwick; and upon breach of the Truſt, a Commiſsion was taken out in Warwickſhire, to enquire of this Gift; and by a Jury there, the Gift and breach of Truſt was found, and a Decrée made by the Commiſsioners in that County, to ſettle the Lands according to the Donors Will: And upon an Appeal the Decrée was reverſed; for the Inquiſition and Decrée was not made, nor found, by Jurors and Commiſsioners of the County where the Lands, given to ſuch uſes, do lye: The words of the Statute are, To enquire by the Oaths of twelve Men, or more of the County, of ſuch Gifts, Limitations, and Appointments, and of the breaches of Truſt of ſuch Lands and Goods, &c. which is intended to be by Jury and Commiſsioners of that County where the Lands do lye.

CASE 25. *Kenſons* Caſe, 41 *Eliz.*

Copyhold.

Reſolved, That a Copyhold may be charged or given to a Charitable Uſe.

CASE 26. *Wingfields* Caſe, 4 *Car.*

Gift to this Incertain.

Money was given for the good of the Church of Dulk, and this was reſolved to be a good Gift, notwithſtanding theſe general words.

CASE 27. *Gaſſe* cont. *Webb.* 44 *Eliz.*

Deviſe to this Uſe.

Hunt ſeized in Fee of the Rectory of Haynes, in the County of Wilts, deviſed the ſame to be ſold, and the Money to be diſtributed unto twenty of the poor of his kindred; and by Egerton and Popham, this was adjudged a good Deviſe, notwithſtanding it doth not apppear, that he had any poor Kindred.

CASE

CASE 28. *Champion contra Smith*, 3 *Jac.*

RIdley ſeized of Copyhold Land in Barking in Eſſex; did deviſe the ſame to the Parſon and Churchwardens of in Thameſtreet, London, to the end, that they, and four honeſt men of that Pariſh, ſhould ſell this Land, and imploy the Money for the Poor and Charitable Uſes in that Pariſh. And upon an Appeal made, it was objected, That the Deviſe was void, becauſe the Parſon and Churchwardens were not a Corporation to take Lands out of London, nor to ſell it for ſuch Uſes; but it was decreed, That the Deviſe was good, and that they had good authority to ſell the ſame. Copyhold-Land. Deviſe to one miſ-named.

CASE 29. *Stoddard*, 20 *Jacobi.*

SToddard deviſed by parcel, a yearly Rent of 10l. per ann. for ever out of his Houſe, called the Swan, with 100 Marks in the Old Jury, London, for maintainance of two Scholars in Oxford and Cambridge, and willed, That one Hugh the Scribener ſhould put it into writing; which was done accordingly: and this being found by Inquiſition, was decreed, and the Decree confirmed upon an Appeal; for although by Law a Rent cannot be created or granted without Deed, or Will in Writing; yet this Nuncupative Will was good, to create the Rent to a Charitable Uſe, by the words of the Statute, or limitation or appointment; for although it be not a good Gift, yet it is a good Limitation or Appointment. *Nuncupative* Will of Rent decreed.

CASE 30. Mayor and Burgeſſes *de Reading, contrà Lane*, 43 *Eliz.*

A Deviſe was made to the poor People, maintained in the Hoſpital of St. Lawrence in Reading for ever; Exception was taken, That the Poor were not capable by that name, for that they were no Corporation, yet becauſe the Mayor and Burgeſſes were capable to take Lands in Mortmain, and they did govern the Hoſpital: It was decreed, That the Defendant Lane ſhould aſſure the Land to the Mayor and Burgeſſes for the maintainance of the ſaid Hoſpital. Deviſe by miſtake to this Uſe.

CASE 31. Mayor of *Briſtol* againſt *Whitton*, 8 and 9 *Caroli.*

A Man deviſeth Money to a Charitable Uſe, to be beſtowed amongſt poor People, and the other of his Goods to be imployed for ſuch Uſes as his Feoffees ſhall think fit. Reſolved by the Lord Keeper, and the Certificate of two Judges, That although Briſtol be a Corporation, yet the Deviſe to them is good.

CASE 32. *Fiſher* againſt *Hill.* 10 *Jac.*

When no Uſe is mentioned or directed in a Deed, it ſhall be decreed to the uſe of the Poor, although the Feoffees be Gentlemen living out of the Town, and no Inhabitants within the Town.

CASE 33. *Peacock* againſt *Thewer, Mich.* 14 *Car.*

Purchaſer, how chargeable with the Uſe.

Lands are to be given to a Charitable Uſe, if a Purchaſor buys theſe Lands, not having notice of the Charitable Uſe, it ſhall not bind the Purchaſor; but if a Rent be given out of Lands to a Charitable Uſe, and a Purchaſor purchaſeth the ſaid Lands for Money, not having notice of the Charitable Uſe, yet he ſhall pay the Rent, for that he doth not purchaſe it, but the Land out of which the Rent iſſueth: but he ſhall not pay any more Arrearages of the Rent than what was incurred during his time of Purchaſe; but every occupier and owner muſt anſwer the Arrearages for his own time. See before, Parkhurſts Caſe; and the Inhabitants of Woodford; and Bernard Hide's Caſe, before.

Who muſt anſwer the Profits of the Land.

CASE 34. 2 *Caroli, Pennyman* againſt *Jenny.*

Lands were given to Churchwardens of a Pariſh, to a Charitable Uſe, although the Deviſe be void in Law; it was decreed good in Chancery, by the words, limited and appointed within the Statute.

CASE 35. Trin. 15 *Car. Pember* againſt the Inhabitants of *Knighton.*

Charitable Uſe what.

Money was given to maintain a Preaching Miniſter; this is no Charitable Uſe named in the Statute, yet by the Lord Keeper and two Judges, it was decreed to be good, and the Uſe a Charitable Uſe, within the equity of that Statute: and the Executor was ordered to pay that Money to the Charitable Uſe, for maintainance of it. Prop. Rep. 139.

CASE 36. Trin. 15 *Car. Penſtred cont. Payer.*

By Bill.

Who chargeable with this Uſe.

Executor.

Salop.

Uppington.

A Deviſeth 20 l. per ann. to a Preaching Miniſter, and makes his Wife Executrix, and dies, leaving Lands and Aſſets in Goods; the Executrix refuſeth to buy Lands, or a Rent of that value; the Lord Keeper and two Judges decree, the Executrix to buy Lands to that value, and to aſſure it for the Charitable Uſe.

CASE

CASE 37. Trin. 15. *Car.* *Bramble* againſt the Poor of *Havering*.

A Feme Covert maketh a Will, and deviſeth 30 s. per ann. out of ſome of her own Lands, to a Charitable Uſe; the heir ſubmits himſelf to an Award, and is bound to perform it; the Arbitrators do award the payment of it: yet by Decree, the heir is diſcharged to pay it, and that the Deviſe was void, ab initio; ſo of an Infant, and other perſons diſabled in Law, to make a Will, or to Deviſe Lands. Deviſe of the Uſe by a Feme Covert or Infant.

CASE 38. Mayor de *London's* Caſe.

Lands were deviſed to the Mayor and Chamberlain of London, to the uſe of the Maſter and Governors of the Hoſpital of St. Bartholomew, London, Reſolved, That Deviſe is good, although the Corporation be not incorporated by that name, but by the name of Mayor and Commonalty; for the intent of the Deviſor ſhall be obſerved: and it appears that the Deviſor intended to give it to the Corporation of London; Alſo the Will is, to maintain an Hoſpital, which is a Charitable Uſe, which the Law ought to favour. Deviſe to a Corporation miſ-named.

CASE 39. *Pauperes de Chelmsford*, and Sir *Henry Mildmay*, Mich. 1649.

King Edward the VI. founded a Free-School in Chelmsford, and made it a Corporation of Guardians, Maſter and Uſher, and gave Chantrey to them and their Succeſſors, to the value of 300 l. per ann. at this day, to maintain the Maſter, Uſher and certain poor People in Chelmsford and Moulſham, and appointed that the Rents, Iſſues, and Profits of their Lands ſhould be imployed for their maintainance, and not otherwiſe; and appointed the Lord Peter, and the heirs males of his body, Sir Tho. Mildmay, and the heirs males of his body, Sir Jo. Tirril, and the heirs males of his body, and Sir Humphrey Mildway, and the heirs males of his body, ſhould be Governours of the ſaid Free-School and Lands; and that none under the degree of a Knight, ſhould be one of the Governors; the Governors make Leaſes of the Lands at under-values, for Fines and ſmall Rents, according as they were at the firſt Foundation. The Commiſsioners decree the Government, and ordering of the Lands to others, by reaſon of their breach of Truſt. Sir Henry Mildmay of Moulſham near Chelmsford, being the chief man that received the Rents, Lett the Leaſes, and defrauded the Truſt; the reſt of the Governors heirs being within age, or beyond the Seas, put in Exception to the Decree. Firſt, That the Corporation had ſpecial Viſitors appointed, and ſo within the Proviſo of

Powers of Commissioners over Visitors and Trustees.

the Statute: Secondly, For that the Decree is against the Founders intent, who would have none under the Degree of a Knight, to be a Governour; to which was answered, That when the Visitors break the Trust, they may be questioned by decree of the Commissioners, as in the Case of the School of Morpeth, and other Cases before cited. Thirdly, That the general intent was of Edw. VI. That the Profits of the Lands should be solely converted for the use of the School and Poor; and that the Visitors and their Heirs, should make no profit of it, and that of being a Knight, was but for the honour of the Family, appointed Governors, and they all being persons of great Possessions, and living near Chelmsford. But the Lords Commissioners reversed the Decree, by reason of the Proviso in the Statute, and ordered that a Bill be exhibited against the now Visitors and Governors, and that upon proof of their breach of Trust, a course should be taken for relief of the School and Poor, according to the intent of the Founder.

CASE 40. *Christs Hospital* and *Hawes*, The Case where a Tenant in *Capite*, Devised all his Lands to a *Charitable Use*.

Ann the wife of *Tho. Hawes.*

T. H. seized in Fee of the Mannor of L. held in Socage, and of 54 Acres of Marsh-Land, held in Capite, devised all the Socage-Lands to C. Hospital in L. paying 1000 l. after the death of A. the wife of T. H. as she in her life-time should appoint the same to be paid.

Nicholas Hawes.

Part of the Socage-Lands Devised to the Hospital, is by Commission of the Court of Wards, set out to N. H. the heir, for his third part, A. H. dies, and the Hospital pays the 1000 l. The Commissioners for Charitable Uses, have decreed to the Hospital, all the Socage-Lands devised to the use of the Poor. This being the substance of the Case, the Questions hereupon arising upon the Appeal, were: Whether the Devise to the Charitable Uses be good, and whether the Commissioners had power to decree the whole Socage-Lands devised, or but two parts only. It was agreed, That by the Statutes of 32 and 34 Henry 8. the Devise is void for a third part. But it was insisted upon, that although the Devise be void for a third part by those Statutes, yet this is such a Limitation and Appointment within the Statute of 43 Eliz. as doth well enable the Commmissioners for Charitable Uses to decree the whole.

Charitable Uses good, albeit it be defective in the Gift.

First, That it hath been generally held, That the Statute of 43 Eliz. for Charitable Uses, doth supply all the defects of Assurances, where the Donor is of a capacity to dispose, and hath such an Estate as is any ways disposable by him. And upon this ground it hath been held, That if a Copyholder doth dispose of Copyhold Lands to a Charitable Use, without a Surrender, or if Tenants in Tail do convey Land to a Charitable Use, without a Fine; or if a Reversion be granted without Attornment or Inrollment, and divers other the like Cases:

yet

yet theſe defects are ſupplyed by the Statute of 43 Eliz. becauſe the Donor had a diſpoſing power of the Eſtate, and this is a good Limitation and Appointment within this Statute: But it is true, if an Infant, Lunatick, or any other perſon, who hath not capacity to diſpoſe an Eſtate, ſhall grant to a Charitable Uſe, this defect is not ſupplyed by this Statute: and this difference is reſolved in Colliſons Caſe, 15 Jac. in the Lord Hobarts Reports, fol. 136.

Secondly, the words of the Statute of 43 Eliz. are very conſiderable in this Caſe; for although the Statute doth give power to the Lord Chancellor, or Lord Keeper, upon complaint to them made, to annull, diminiſh, alter, or inlarge any Decrée, made by the Commiſsioners for Charitable Uſes: yet the ſame is with this Limitation, ſo far as may ſtand with Equity and good Conſcience, according to the true intent and meaning of the Donor and Founder thereof.

Whereby it doth appear, That in all Gifts, Appointments, Limitations, and Aſsignments within that Statute, ſpecial regard is to be had, to the intent of the Donor; and this power of annulling, diminiſhing, altering, or enlarging Decrées, made by the Commiſsioners for Charitable Uſes, is appropriated ſolely to the Lord Chancellor, or Lord Keeper, and not to any other, and to proceed therein according to Equity and good Conſcience.

Thirdly, the Caſe of G. L. Hillar. 13 Jac. reported by the Lord Hobart, fol. 136. doth reſolve the point in queſtion; where the Caſe being, That G. L. being ſeized in Fee of Lands in Cardigan, 1571. in Aug. 25 Eliz. Deviſed the ſame Land to A. his wife for life, and after to J. his Daughter for life; and after theſe Lives ended, to the principal Fellows and Scholars of Jeſus Colledge in Oxford, and their ſucceſſors, to find a Scholar of his Bloud from time to time, and dyed: the Lives ended, B. L. the Heir of G. L. being the Kings Ward, entred, and upon a Caſe made thereof in the Court of Wards, and by order of that Court, brought to the Lord Hobart, then Chief-Juſtice of the Common-Pleas, and the Lord Chief Baron Tanfield, to be reſolved of by them, who agreed, and ſo certified, That the Deviſe was void in Law, becauſe the Statute of Wills did not allow Deviſes to Corporations in Mortmain, yet they held it clearly within the relief of the Statute of Charitable Uſes of 43 Eliz. under the words Limited and Appointed; and ſo it was Decreed, That the Colledge ſhould enjoy it againſt the Ward and his Heirs. *Griffith Floud.*

The Caſe of Colliſon 15 Jacob. Reported likewiſe by the Lord Hobard, fol. 136. Reſolved the point in queſtion, where the Caſe being, That Colliſon, 15 Hen. 8. Deviſed a houſe in Etham in Kent, to L. his wife for life; and after her death, made J. K. and others Feoffees (as he called them) in the ſaid houſe, to keep it in Reparations, and to beſtow the reſt of the Profits upon the reparation of certain high-ways there; Colliſon

23 Car. 2. int. *Higgens* and *Mayor South*. Adjudged by the Lord Keeper and Mr. Juſtice *Wild* for the *Hoſpital*.

liſon and his Wife dyed, and the Houſe deſcended to O. B. an Infant. This Caſe being in Chancery, between the Pariſhioners and B. was referred by the Court to the Lord Hobard, and the Lord Chief Baron Tanfield, who reſolved it clearly, that though the Deviſe were utterly void, yet it was within the Relief of the Statute of 43 Eliz. within the Words, Limited and Appointed to Charitable Uſes.

This Decree was deſired to be confirmed by the Lords Commiſsioners, Keepers of the Great Seal; for that it fully appeared to them, that it was the true intent and meaning of A. H. the Donor, that all the Lands in queſtion ſhould go to the Hoſpital. But the Parties agreed.

CASE 41.

IN Mich. 14 Jacob. in the Exchequer, Standiſh and Short, in an Ejectione firmæ, on a Leaſe made by the Parſon of S. John Evangeliſt in London, on a ſpecial Verdict, the Caſe was, That a Houſe in London, where by Cuſtom, any Freeman may, by his Will, Deviſe in Mortmain in Fee, in Tail, for life, or years, &c. That W. D. (ſuch a day) was ſeized, &c. made his Will in Writing and deviſed the Houſe thus:

Deviſe Expound.

First, he deviſed a Quit-Rent of 40 s. a year, to the Parſon of St. John Evangeliſt, and his Succeſſors, to pray for Souls, and deviſed to the Parſon and his Succeſſors, a Chamber, with two Cellars, lying on the North-ſide of the Houſe, to pray for Souls, with this ſubſequent Clauſe.

Superſtitious Uſes, and good Uſes mixt.

Item, Lego & ordino, quod unus Capellanus celebret in Eccleſia Sancti *Johannis* prædict. Statim poſt deceſſum meum pro Anima mea & Animabus prædictis, & quod idem Capellanus percipiet annuatim de Tenemento meo, 8 Marks pro ſtipendio, & volo quod idem Capellanus ad matutinas miſſas & omnibus aliis horis Canonicis in Eccleſia predicta interſit per diſpoſitionem Rectoris ejuſdem, qui pro tempore fuerit, & de reſiduo ſi quod clarum fuerit ultra ſolutionem dict. tenementi; Volo, quod *Richardus* Filius, *Elizabethæ* Uxoris meæ ſcholatizando adjuvetur quouſque ad legitimam ætatem pervenit, ad ordines ſacerdotales percipiend. & cum Sacerdos fuerit; Volo, quod idem *Richardus* dictum Cantarium occupet pro termino vitæ ſuæ ſi voluit; Et ſi non de reſiduo tenementi prædict. Neque de cantario nihil percipiet, ſed Rector antedictus qui pro tempore fuerit, & 4 Magiſtri ſufficient. Parochiam Præſentent, & invenient unum Capellanum ad dictum Cantarium occupandum in perpetuum de tenementis meis in dominica Parochia non legatis; Salvo tamen quod lege de dictis tenement. meis Rectoribus & ſucceſſoribus ſuis illam manſionem quam *J. S.* modo tenet reddend. inde Annuatim tot. quiet. Reddit. de omnibus tenementis meis exeunt. Item volo quod ſi Dominica Cantaria pro defectu dict. Rectoris, vel Succeſſorum ſuorum retardavit, &

ultra

ultra 40. dies inoccupat. fuerit, quod dict. camer. ſolarii, & manſiones erunt Gardianis de ponte. Et id quod clarum fuerit, & reſiduum ultra ſolutionem & reparationem prædict. Volo, quod ponatur ſub cuſtode Rectoris, & 4. Parochianorum ad providend. ornamentum & libros Dominicæ Eccleſiæ.

The Deviſor dyed, ſeized of the Tenement; and they found the Meſſuage (in queſtion) parcel of one of the Tenements in the Will, out of which the Teſtator did ordain, That the Chaplain ſhould have 8 Marks for his ſtipend; and that H.T. was Parſon of the ſaid Church, at the death of the Deviſor, and the Church void by his death; and the Leſſor was preſented, admitted, inſtituted, and inducted, and he entred into the houſe in queſtion upon the Defendant, and did expell him, and made the Leaſe to the Plaintiff, who entred, and was poſſeſt, until the Defendant ejected him; Prayed the opinion of the Court.

The queſtion was, Whether the Parſon by this Deviſe ſhould have the houſes, the ſaid 8 Marks limited, to be paid to the Chaplain, or not?

In this Caſe, it was adjudged, That the Land was not demiſed to the Parſon by this Will; and Judgement given for the Defendant. Bridgemans Rep. 106.

CASE 42.

IN Hill. 7 Car. B. R. In Lancelot and Allen's Caſe, in Treſpaſs on a ſpecial Verdict, the Caſe was this: That one C. was ſeized in Fee of the houſe in queſtion, in S. Swethins, and other houſes in St. Olives, in London; and the Cuſtom was found, (as in the laſt Caſe) And he deviſed the houſe to the Parſon of St. Martins Orgars, and his Succeſſors, to find yearly one to ſing Maſs in the Church of St. Orgars, every day, and that there ſhould be paid unto him Ten Marks by the year. And he deviſed the houſe in queſtion to his Wife for life, to find an Anniverſary, and expend thereupon divers ſums, amounting to 3 l. 6 s. 8 d. and after her death, to the Parſon and his Succeſſors, finding the ſaid Anniverſary. And further appointed to the Church-wardens 6 s. 8 d. for their pains, to ſee it obſerved. Et quod ſuperfuerit, over and above the ſaid Charges, he Wills ſhall remain in the hands of the Church-Wardens of Martins Orgars; Ad manu-tenendum Capellanum prædictum, & ad emendandum & reparandum dictam Eccleſiam de *St Martins Orgars*, & Ornamenta ejuſdem Eccleſiæ ſecundum eorum diſcretionem. Proviſo ſemper, quod ſi contingerit prædict. terras & Tenementa in *St. Swethins*, in aliquo caſu fore minoris valoris quam decem *Marcis*. per quod Capellanus prædictus, ut prædictum eſt invenire non poterit, tunc volo quod totum, quod de prædicta annuali ſumma de decem *Marcis*, haberi & levari non poterit, haberetur & levaretur

Deviſe Expound.

Superſtitious Uſes, and good Uſes mixt.

retur de proficuis tenementorum prædict. in *St. Olives*, by the ſaid Parſon and his Succeſſors ad opus & ſuſtentationem dicti Capellani in perpetuum. And they found that the Tenements in St. Swethins, at the time of the Will making, and before, were but of the yearly value of 6 l. 5 s. And the Tenements in St. Olives, at the time of the Will, and always after, until the time of the Statute of 1 Ed. 6. were of the value of 24 l, 10 s, per annum; and that the Prieſt, and the ſaid other uſes, were employed and maintained, until the making of the ſaid Statute of 1 Ed. 6. And that the Plaintiff claimed as Leſſee of the Parſon, and the Defendent claimed under the Patentee of the King. And whether the Parſon of St. Martins Orgars had Title to the Tenements of St. Olives, was the queſtion. And it was held by all the Court, That if this Proviſo had not been added, the Lands had been clearly given to the King by the Statute of 1 Ed. 6. as Lands given for the maintainance of a Prieſt. For the Clauſe for thoſe Lands of St. Olives was limited, Quod ſuperfuerit, after the Anniverſary maintained, ſhall be ad manu-tenendum Capellanum prædictum, & reparandum Eccleſiam & ornamenta ejuſdem Eccleſiæ, the Superſtitious Uſes being certain; and the good Uſe (viz.) ad reparandum Eccleſiam & Ornamenta ejuſdem Eccleſiæ, uncertain; the Superſtitious Uſe certain, ſhall cauſe that all ſhall be given to the King. But Richardſon Chief-Juſtice, Jones and Whitlock conceived, That by the Proviſo it appears, it was his intent the Prieſt ſhould have but 10 Marks; and what was wanting in the value thereof, ſhould be ſupplied out of the Tenements in St. Olives: ſo that nothing was given to the Prieſt, but the 10 Marks; therefore the Land of St. Olives was not given to the King. But Crook Juſtice doubted thereof, and conceived all to be given to the King; for the Proviſo doth not alter it. For in the firſt Clauſe, all the profits of thoſe Lands, after the Anniverſary found, is given for the maintainance of a Prieſt indefinitely, and to the Reparation of the Church, &c. And the Proviſos doth not abridge it: For that appoints what is wanting in St. Swethins, ſhall be made out of of St. Olives; and ſo to pay the 10 Marks firſt appointed, ſo as he ſhall have the 10 Marks, de certo, out of both the ſaid Tenements in St. Swethins and St. Olives. But that doth not take away the Clauſe, that the reſidue of the Profits of the Tenements in St. Olives, ſhall be to the Parſon, ad ſuſtentationem dicti Capellani; And of this opinion was Hide, Chief Juſtice when he lived. But it being moved again in Sir Tho. Richardſon's time, he agreeing with Jones and Whitlock in their opinions, it was adjudged for the Plaintiff; That this Land was not given to the King. Crook, Rep. 1. 180. 181.

CASE 43.

CASE 43.

IN Hill. 37 Eliz. Rot. 715. between Partridge and Walker, in the King's Bench, the Caſe was; One Hill Deviſed Houſes in London, to the Parſon and Churchwardens of the Church of St. Brides, to find, for ever, his Anniverſary, appointing upon it 20s. and to pay to the Poor 5 s. 6 d. in honorem & duplicationem annorum in quibus Chriſtus vixit in terra. And it was adjudged, That the Land was not given to the King; for the laſt payment was good Cook 4. 116. Deviſe. Mixt Uſes. Charitable Uſes. Superſtitious Uſes.

CASE 44.

PAſch 2 and 3 Ph. & Ma. Rot. 186. in the Kings Bench, Whetſton's Caſe; It was adjudged, That where Lands were given to find an Obit in ſuch a Chappel, appointing a certain ſum upon it, and that the reſidue ſhould be imployed for the reparation of the Chappel, in which the Obit ſhould be celebrated. In this Caſe it was adjudged, that all the Land was given to the King, for the one doth depend upon the other. And by Popham this Caſe cited, Paſch. 10 Eliz. Rot. 398. One Draiton ſeized of Lands in Fee in London, Deviſed it to the Dean and Chapter of Pauls, on condition that they find two Chaplains to pray for his Soul in a Chappel newly built by him, and to pay to them for their Salary 13 l. 6s. 8 d. and to find an Obit, appointing upon it a certain ſum, and to repair the Chappel, and this found within the 5 years: yet it was adjudged againſt the King. Charitable and Superſtitious Uſes.

CASE 45.

IN Trin. 30 Eliz. Rot. 709. between Adams and Stakes, in the Kings Bench; the Caſe was on a Demurrer. William Dunſton Deviſed Land to the Parſon and Churchwardens of St. Botolphs, on condition to find a Prieſt, and that he have for his Salary 6 l. of the Iſſues and Profits of his Lands deviſed. Alſo he deviſed yearly for ever to the Priſoners of Newgate and Ludgate 13 s. 4 d. at the day of his death, to pray for his Soul, beſides the ſaid ſole Prieſt; the reſidue for the reparation of the Tenements, and augmentation of the Prieſts portion. And the Land was given to the King. For praying for, although it were out of a Church or Chappel, was ſuperſtitious, and the augmentation of the Prieſts maintainance incertain. Cook. 4. 116. Mixt Uſes. Charitable & Superſtitious Uſes.

CASE 46.

IN Trin. 20 Eliz. Rot. 589. Between Colborn and Dale in the Kings Bench, on a Demurrer, the Caſe was: Thomas Wills, 12 Ed. 4. deviſed Houſes in London, worth 24 l. per ann.

to his wife for life, the remainder to the Parson and Churchwardens of St. Edmonds and their Successors, and devised, that his wife, during her life, and they in remainder, should find a Priest to say Divine Service, at the Altar in the Chappel of our Lady, in the Church of St. Edmonds, for the Souls, &c. And that the same Priest should be aiding and assisting to Divine Service in the Church; And that his Wife, for her life, and they in remainder after, should pay to him for his Salary, 6 l. 13 s. 4 d. Further, he devised, that they found with six Priests, and appointed 22 s. certain, to be imployed upon it; whereof part to be distributed amongst the poor of the Trade of Drapers, which should come to the said Obit, and could not come. Also, he appointed 16 d. yearly to the Parson of St. Edmonds, for the beading of Beads; every Sunday 3 s. 4 d. to the Fryers of St. Augustin, to pray for his Soul. Also, 4 s. yearly to be paid to the Preacher at Pauls upon Good-Friday. To three Preachers at the Spittle, to commend his Soul to the Prayers of the People, 13 s. 4 d. Also 3 s. 4 d. to the Wardens of the Company of Shearmen, to distribute amongst the poor Alms-men of that Trade; to the intent, that those of the Wardens, with 8 or more of the said Company, upon warning, should come to his Obit. Also, he appointed Accompts yearly to be taken; and that the Church-wardens of St. Edmonds should have the Letting and Setting of his Lands; and the Churchwardens of St. Mary Woolnaugh should come yearly, and have for their pains 6 s. apiece; and the Churchwardens of St. Edmonds to have 6 s. 8 d. And 11 s. 4 d. yearly, be appointed for the finding of Books and Ornaments, and Vestments of the Chappel, where he appointed his Obit to be celebrated; And that all the Revenue coming of the Premisses, shall be in several keeping, separated from other Moneys, in a Chest, for the reparation, and new building of the Tenements: And it was adjudged, that the Houses were given to the King: for all the Uses were either Superstitious, or were depending upon the Superstitious Uses; or tending to the maintainance and continuance of them. Cook 4. 116.

Superstitious Uses.

CASE 47.

IN Adams and Lambers Case, Cook 4, These things amongst others, were Resolved:

1. That if A. Devise to any of his kindred, to Superstitious Uses; and though he had limited them to pay certain sums of Money to those Uses, yet are those Lands given to the King: No other consideration shall be supposed, but that which they in those times thought to be the Service of God. This was the most worthy Consideration, and Reason, for which the Devise was made to Friends; more Trust was imposed in these, then in others: Therefore were these pick'd out, and therefore the persons are not to be regarded.

Superstitious Uses.

2. Devise

2. Devise of an Estate for Life, or in Tail, as within the Statute by Equity, though it says, To have continuance for ever; The intent of the Statute, was, to extinguish those Uses; it regards not the time of their continuance. 2. Estates Tail may continue for ever; and this was the intent of the Devisor, that the Uses should continue for ever; for here, when it is come to him, is to do as much; without this construction the Statute would be eluded.

3. The Statute wills, That Lands assigned for the finding of a Priest, &c. belong to the King, then to give Lands on condition to find a Priest, must be within the Statute, as more compulsory than the other.

4. The whole Land was given to the King, but not by the first Branch; that extends only to lawful Chantreys, or such as have the countenance of a lawful beginning; not to those that want the colour of such lawful beginnings; as where the Popes Licence lays the first Stone. This is a Chantry without colour of a lawful Foundation, so where the Gift is to find a Chantry without a Corporation, this is out of that Branch. Now by the second Branch, that gives the Land belonging to such Colledges to the King, without which, only the situation had been his. By the third Branch, which reaches to the finding a Priest without Corporation. It was said, That the Land was not given to the finding a Priest, only a Pension was appointed him out of it; and the Statute speaks thus, The King shall have it in large; &c. as the Priest had; then that a good Use was limited, 6 d. weekly to six poor Men; and though he added, To pray, &c. this is not prohibited, for none but publick Prayers are within the Statute: Answered, with these differences, If 20 l. be given yearly to find a Priest, though his share is to be but 10 l. by the year, all is given to the King, the rest shall be intended to find necessaries: Otherwise, if a Condition were fixed to the Gift of 10 l. the year, there the King shall not have more then the 10 l. Secondly, 20 l. the year assigned, 10 l. to find a Priest, and the other 10 l. to the Poor, the same; were it generally to find, &c. And for maintainance of poor Men, without limitation what the Priest shall have; the King must have the Land or nothing; Thirdly, 20 l. Land, &c. for the sallary of a Priest 10 l. some other Necessaries are to be found in certain. A good Use limited over, the King shall not have more than 10 l. a good Use in certain shall be preferred before a Superstitious Use in certain; if nothing be limited in certain to the Priest, the King has all; Fourthly, if only a stipend be limited, no more but the stipend: Fifthly, after the sum to the Priest, Uses follow, not forbidden, but depending upon the Superstitious Uses, nothing shall be preserved: Sixthly, So there be what certainty there can be, if they be all Superstitious; the words, In as large, &c. They refer to the First, Second, and Fourth Branches, not to the Third, else the King shall ne-

ber have the Land it self, which was never limited to the Priest; and though the Prayers were to be made out of the Church, it is within the Statute. The words Church or Chappel, extend to Lamps and Lights, not to Prayers; It says, anniversary, or like thing; and this is like thing, in the bare Case: These words, That his Friends should have the residue of the profits of the Land, have saved the Land, Cook 4 Part, 104. And in
Good Uses. this Case, the Cases of Hewet, and Wotton, and Chibnall and Wotton were agreed to be good Law, for two Causes in the Judgement of them. 1. Because nothing was limited to the Priest, but 2 d. or 3 d. a week, which is not within the Act; for such petit things cannot find or maintain a Priest, as the words of the Act are. And in one of the Cases, he said not Mass every Sunday, and Dirige once a year, which is within the Clause of Obits, to such like intent or purpose. (2.) Ad-
Mixt Uses. mit there had been a sufficient maintainance for the Priest, yet because there were good Uses, separate and divided from the Superstitious Use, (viz.) in the one Case 3 s. 4 d. for the Poor, &c. And in the other, to find Ornaments in the Church; for these Causes, Judgement was given, that the Land was not given to the King. Also it was adjudged for these Reasons in Hewets Case, That the King should not have the Land; (1.) Because the Land it self was not given to find a Priest, (and so not within the third Branch of the Act) but to find an annual Sustentation of 10 Marks for a Priest, which is within the Fourth, and not the Third Branch. And it was Resolved, That in the Case of the Dean of Pauls (touched by Dyer,) That if Land be given to pay 10 Marks to a Priest, and 40 s. to the maintainance of an Obit; in this Case, if both be found within the five years, the King will have all the Land. But in that Case, because the Obit was not found within the five years, the King could not have the Land. And therein this difference was taken, where certain sums are limited to Superstitious Uses, and one Use is separate and divided from the other; there the finding of one, will not give all the Land to the King, but onely the Sum appointed to the Superstitious Use, which was imployed within the five years. But if the one Use depend upon the other, there the finding of the Principal, or any part thereof, giveth all the Land to the King. As where Land is given to the intent, that an Obit shall be in such a Church or Chappel, and that upon the Obit, 10 s. shall be imployed and distributed to the Priest, and to divers poor persons, who shall be present at it, 6 s. 8 d. and the rest of the Profits to the reparation of the Church or Chappel; in this case, if the Obit be maintained with any part within the five years, albeit the 6 s. 8 d. be not imployed to the poor men, nor any thing upon the reparation of the Church or Chappel, within the five years, yet all the Land will go to the King. So where certain Houses, called the Bull, were given to find a Priest to pray for Souls, &c. and other Tenements called

the

the Swan, were given to the ſame Feoffées to find an Obit to the ſame Feoffées; and the Feoffées imployed the Profits of the ſeveral Houſes to contrary Uſes, (viz.) the profits of the Bull for the Obit, and the profits of the Swan for the Prieſt; by this all is given to the King, Cook 4 Part, 115. So if one give the Mannor of Dale, and the Mannor of Sale, to find Superſtitious Uſes, and they with the profits of one Mannor, find the Superſtitious Uſes, and imploy the profits of the other, to the uſe of the poor Inhabitants of the Town, or to bear the common Charges of the Town; yet both Mannors are given to the King. But if the Feoffées had before the five years conveyed part of the ſame to another in Fee, and imployed the Land, only that remaining in their hands, and none of the other Land for the Superſtitious Uſes within the five years, there the King ſhall not have the Land of the ſecond Feoffee. And in Trin. 18 Eliz. The Caſe was, A. ſeized of Houſes in London, Deviſed them, 3 H. 6. upon condition, to find an Obit of 4 l. 6 s. 8 d. within the Parish of St. Mary Patents in London, ſpending thereat ſo much as the Deviſées would in their diſcretions, and they expended on the Obit only 6 s. 8 d. per ann. 1. And it was adjudged, The Queen ſhould have the Houſes; for the appointment was incertain, albeit the imployment was certain. 2. That all the Uſe expreſſed was Superſtitious; and therefore it was ſaid, That if Land to the value of 5 l. be deviſed to find an Obit, ſpending upon it 3 l. per ann. In this Caſe, albeit a certain ſum is given, yet becauſe the Land is given to that Uſe, and no other Uſe expreſſed; it will all go to the King: Cook 4 Par. 115.

CASE 48.

IN Paſch. 9 Jac. in the Exchequer, the Caſe was thus; Edward Wickham declared in an Ejectione firmæ That Skeen, 17 April, 6 Jac. at Feamlingham in Suffolk Demiſed to him 30 Acres of Paſture, to have for three years, &c. And upon the general Iſſue pleaded, the Jury found, That Thomas Cooper and three others, were ſeized of the Lands in queſtion; and the fifth of February, 24 H. 8. enfeoffed by Indenture M. B. and five others, to the Uſes and Intents mentioned in a Schedule annexed; and that was upon condition, That if they aliened to any other uſes or purpoſes, that the Feoffor ſhould re-enter. And the Jury alſo found the Schedule, which in effect was this; viz. That the Feoffées and their Heirs ſhould take the profits, and therewith find an honeſt Prieſt; by them, or the greater number of them, to be hired, and competently paid, to ſay Maſs for the Souls of the Feoffor, and his friends; and that by the ſpace of 99 years then enſuing: and at the end of the ſaid years, the Feoffées their Heirs and Aſſigns, who then ſhould be ſeized, ſhould ſell the Lands, and with the Money find a Prieſt to Chaunt for the Souls aforeſaid, Superſtitious Uſes.

ſaid; and with the ſame Moneys or Lands alſo, to make further Proviſion for a competent poor honeſt Prieſt for the time being (if then it could be) by Amortization, or otherwiſe, as they ſhould think beſt, for the ſure and long continuance of the ſaid honeſt Prieſt, if ſo it could be continued by order of Law: The Jury found all things executed accordingly, and the finding of a Prieſt from the 24 of H. 8. until the 1 of Edw. the 6. By which Act the King was Entituled, Prout Lex poſtulat; and that Quæn Eliz. granted to Mildmay for 21 years, upon whom Fuller, the Heir of the ſurviving Feoffee entred, and made a Feoffment to Wilbey and Skreen, by force whereof they were ſeized, and Mildmay re-entred, and his term expiring, he obtained a new Leaſe, 43 Eliz. and made a Leaſe to Wood, and Skreen ſurvived Wilbey, and made a Leaſe to Wickham, who entred, and being outed by Wood, brought this Action: and ſo Judgement was given for the Plaintiff, againſt the opinion of Altham. The Caſe of Wickham and Wood. *Lanes* Rep. 112, 113.

CASE 49.

Sir John Tate ſeized of Houſes in London in Fee, and Deviſed them by his Will to the Company of Dyers, to repair the Houſes, and find a Secular Prieſt for ever, to pray for Souls in the Church of St. Michael in Cornhil, paying to him a competent Living, no leſs then 8 Marks by the year; and the Houſes then were of greater value: And yet becauſe it was incertain what ſum the Prieſt ſhould have; and if the ſame had been certain; yet becauſe the Land was given to find a Prieſt, and no good Uſe limited, the King will have all, by the third branch of the Act, Cook 4. 113.

5 *Car.* 1. *Wiveleſcom*, in Com. *Somerſet.*

Moneys given to the relief of the Poor, paid out to build a Conduite. Adjudged a miſimployment.

5 Car. Rot. 1. Lands conveyed to Truſtees in Truſt for another, who was to maintain a Charitable Uſe. The Commiſsioners decree the Lands againſt the Ceſtuyqui Truſt, and not againſt the Truſtees. And the Decree adjudged good, though the Truſtees were no parties.

Eodem Rot. Notice given to the firſt Purchaſor, the Ceſtuyqui Truſt, Adjudged good notice to the ſucceeding Purchaſors.

Eodem Rot. The Record of an Incorporation of a School, adjudged a good notice.

44 Eliz.

An Annuity Deviſed out of Lands holden in Capite, to Charitable Uſes, judged good.

An

CASE 51.

ONe Walpool, M. 23. Ed. 3. by his Will in Writing, deviſed Houſes in London, worth 30l. per ann. to the Company of Goldſmiths, to the intent, that they, with the Iſſues and Profits thereof, ſhould find two Prieſts, paying to each of them 6 l. 13 s. 4 d. for his Salary: In this Caſe it was Reſolved, That the Quæn ſhould have the Houſes, Cook 4. 113.

CASE 52.

ONe Pele Deviſed by his Will in Writing, certain Houſes in London, to the Cloath workers in London, to the intent, that they for ever, ſhould pay to ſuch Prieſt, who ſhould pray for his Soul in the Pariſh Church of Chilham, 9 l. 6 s. 8 d for his Salary. In this Caſe the King will not have the Houſes, for they are not given to find a Prieſt, but to pay a Prieſt a certain ſum, Cook 4. 13.

An Information in *Chancery*, by the Kings Attorney-General, at the Relation of a Relator, for the diſcovery of Evidences and Eſtates, made of Lands, given to ſeveral *Charitable Uſes*; and that the increaſed and improved Rents of the Lands may be applyed to the *Charitable Uſes* proportionably, according to the ſums to them ſeverally, at firſt limited, aſſigned, and appointed; And that the Lands may be ſet out and bounded, or the like number of Acres ſet out and laid together, &c.

To the Right Honourable, &c.

IN formeth your Lordſhip, Sir J. P. Knight and Baronet; Attorney-General of His moſt Excellent Majeſty, Our Soveraign Lord the King, that now is, by, and at the relation of R. C. of &c. in the &c. That one R. R. Clerk, deceaſed, in his life-time; to wit, in or before the firſt year of the Reign of Our late Sovereign Lady Mary, late Quæn of England, was ſeized in his Demeſne, as of Fee, or had a diſpoſing power in Fee, of, and in a Meſſuage, and ſeveral Lands, Tenements, and Hereditaments, ſcituate, lying, and being, within the Manor and Pariſh of V. in the County of H. containing together, 100 Acres, and upwards, and lying diſperſedly in ſeveral pieces and parcels, within the ſaid Manor and Pariſh; and being ſo thereof ſeized, the ſaid R. R. on or about the &c. day of &c. in the firſt year of the Reign of Our ſaid late Sovereign Lady, Quæn Mary, did, by Indenture, under his Hand and Seal, Demiſe the ſame Meſſuage and Lands to one J. R. his Executors and Aſsigns, for the term of 99 years, or ſome ſuch long term; yielding and paying therefore yearly unto the ſaid R. R. and his Aſ-

ſigns

ſigns, during ſo much of the ſaid Term, as he the ſaid R. R. ſhould live, the ſum of 7 l. And alſo yielding and paying, from and after the deceaſe of him the ſaid R. R. the ſum of 61. 10s. during the then reſidue of the ſaid term of 99 years, in manner following; That is to ſay, The ſum of 3 l. 10s. to the Maſter and Fellows of the Colledge of M. &c. for, and towards the maintainance of a poor Scholler in the ſaid Colledge, 2 l. to the Miniſter, Conſtable, and Churchwardens of S. to be by them diſtributed to the Poor of S. aforeſaid; and 20s. to the Overſeers of the Poor of B. in the County of N. to be by them diſtributed, to, and among the Poor there. And that about the 20. day of J. in the ſaid firſt year of the Reign of Our ſaid late Queen Mary, the ſaid R. R. by good and ſufficient Conveyances, and Aſſurances in the Law duely executed, did Convey and Aſſure the Reverſion, Fee, and Inheritance of the ſaid Meſſuage, Farm, and Premiſſes; to, and upon ſeveral perſons, ſome of them then living, in and about S. and their Heirs in Truſt; and to the intent and purpoſe, that after the expiration or determination of the ſaid Leaſe and Term of 99 years. The ſaid Truſtees, their Heirs, and Aſsigns, ſhould apply and diſpoſe of all the Rents, Iſſues, and Profits of the ſaid Meſſuage, Farme, and Premiſſes, to, and for the maintainance of one poor Scholar in the Colledge aforeſaid, and in the relief of the poor of the ſaid Pariſhes of S. and B. aforeſaid. And by the ſaid Deed of Conveyance, the ſaid R. R. did appoint, That when any ſeven or more of the Truſtees ſhould be dead, that then the ſurviving Truſtees ſhould make a new Feoffment, or ſome other Aſſurance to the uſe of themſelves, and ſo many other perſons as ſhould make up the number of the ſaid ſurviving Truſtees, the number of Twelve upon the Truſts aforeſaid, and that the ſame Order and Rule ſhould be obſerved and continued for ever, as by the ſaid Original Feoffment, Conveyance, or Aſſurance (if His Majeſties ſaid Attorney had the ſame to ſhew forth) it doth and would more plainly, and at large appear. And His Majeſties ſaid Attorney further informeth your Lordſhip, at, and by the Relation aforeſaid; That the ſaid R. R. ſhortly after the making of the ſaid Conveyance and Settlement, dyed: and that the ſaid J. R. his Executors and Aſsigns, poſſeſſed and enjoyed the ſaid Farm, during the full term granted by the ſaid Leaſe; and that the ſaid J. R. his Executors and Aſsigns, from the time of the death of the ſaid R. R. until the expiration of the ſaid Leaſe, did from time to time, pay 3 l. 10s. per ann. to the Maſter and Fellows of M. Colledge, aforeſaid, for the time being; and Forty ſhillings per Ann. to the Miniſter, Conſtable, and Churchwardens of S. aforeſaid, for the time being, for the benefit of the poor people in that Pariſh; and Twenty ſhillings to the Overſeers of the poor of B. aforeſaid, for the time being, for the uſe of the poor of that pariſh.

And

And his Majesties said Attorney, by the Relation aforesaid, further informeth your Lordship, That the said Lease of 99 years, so made by the said R. R. to the said J. R. of the Messuage, Farme, and Premisses aforesaid, expired by effluxion of time, at, or about the Feast of &c. which was in the year of Our Lord God, &c. And that the same Messuage, Farm, and Premisses so given, assigned, and appointed to the said Trustées as aforesaid, to and for the Charitable and Pious Uses aforespecified, at the time of the expiration of the said Lease of 99 years, were, and ever since have been (Communibus annis) of the clear yearly value of 30l. or thereabouts. And that one full moyety, and above one fifth part of the other Moyety thereof, ought to have been paid unto the said Masters and Fellows of M. Colledge aforesaid, for the time being, for the maintainance of a poor Scholar in the said Colledge, and near a third part of the other Moyety thereof, ought to have been applyed towards the relief of the poor of B. aforesaid, and a proportionable rate according, to the rate of 40 s. per ann. as was first appointed, ought to have been applyed, and disposed, for, and towards the relief of the poor people of the parish of S. aforesaid, according to the intent and true meaning of the said R. R. the Donor of the said Farme, and Premisses. But so it is, may it please your good Lordship, That the said Original Deed, whereby the Reversion of the said Farme, and Premisses was so granted by the said R. R. aforementioned, to the said Trustées, for the Pious and Charitable Uses aforesaid, and the mean Conveyances made by the surviving Trustées, and whereby the Estate was continued in succeeding Trustées, being left in the said Messuage, to be there preserved, for succeeding Generations, did there remain until the time of the expiration of the said term of 99 years. And one W. K. an Assignée of the said Lease of 99 years, being then in possession of the said Messuage, at the time of the expiration of the said Lease, one D. C. by practice and confederacy with the said W. K. and his wife, did possess himself of all the Deeds and Writings, whereby the said Estate to the said Trustées was created, conveyed over, and continued; and the said D. C. designing, and contriving how to defraud and defeat the said Charitable and Pious Uses, and to make a benefit and advantage thereof to himself; he the the said D. C. did combine, and confederate himself, to, and with one E. G. late of S. aforesaid, Clerk. W. H. of S. aforesaid, Gent. W. T. of the same, Gent. F. L. of the same, Yeoman, and T. L. of the same, Yeoman; and to, and with divers other persons, as yet unknown to his Majesties said Attorney, or the said Relators, whose names, when they shall be discovered, his Majesties said Attorney, prayeth they may be inserted into this his Information, with apt words to charge them, and that they, and every of them may be made parties hereunto, and may answer the same. And in pursuance of their said inten-

tions, and by the combination and confederacy aforesaid, the said confederates do not only conceal, and suppress the said Deeds, Writings, and Evidences. But in the time of the late Wars and Troubles in this Kingdom, did make divers secret and other Entries into, and upon the possession of the said Farme and Premisses, and have by the combination, practice, and confederacy aforesaid, made and contrived divers secret and fraudulent Estates of the said Messuage, Farm, and Premisses, among themselves, and to, and from one another, so as neither his Majesties said Attorney, nor the said Relators, do know, or can tell, who hath actually taken the profits of the said Premisses, sithence the said year of Our Lord God, &c. or who, in certain, hath had the possession of, or claimeth to have and hold the said Farm and Premisses, nor under what Colour, Pretence, or Title. And the said Confederates doe unjustly detain, and withold the Rents, Issues, and Profits of the said Farm and Premisses, from the Pious and Charitable Uses aforesaid, and do convert and apply the same to their own Uses. And the said Confederates aforenamed, the better to countenance, and colour their said practice and design, have also combined and confederated themselves, to, and with one C. E. of London, Esq; who is Lord, or reputed Lord of the Manner of V. aforesaid, P. B. Clerk, Rector of the Parsonage of V. aforesaid, and to, and with one J. H. of V. aforesaid, Yeoman, and by the combination aforesaid, the said Confederates have taken away, removed, defaced, and destroyed the Baulks, Partitions, and Boundaries, which did separate, divide, and distinguish the same Lands and Premisses, from the Demesne, and other Lands of, and belonging to the Lord of the said Manner, and from the Glebe, and other Lands, of which the said Confederates, or some of them, are seized, or which they or some of them do hold in Fee-simple, or for term of years, and have so intermixed and confounded the same Lands and Premisses, with other Lands, that the said Lands so given, appointed, and assigned to, and for the said Charitable Uses, cannot certainly be distinguished from the Lands of the said Confederates, nor can it now be discovered, where the antient Baulks and Boundaries thereof were. And they the said Confederates, and unknown persons, or some of them, do give out in Speeches, that they, or some of them, do hold, and claim to hold the said Messuage, Farm, and Premisses, and the Profits thereof, as their, or some of their own proper Lands, Estate, and Inheritance. And that the same Farme and Premisses, or any of them, were never the Lands or Estate of the said R. R. and if they were, yet the same were not by him given, assigned, or appointed to any Charitable or Pious Use, but that the same are come to them, or some of them, from the said R. R. by mean Conveyances, and are not charged or chargeable with, or lyable to pay, any sum or sums of Money whatsoever, to, or for the Charitable Uses afore-

aforesaid, or any of them; and the better to intricate, perplex and blind the matter, and to avoid the payment of, and attempting for the Profits of the said Premisses, to, or for the said Charitable Uses. The said C. E. by the combination aforesaid, doth pretend, and give out, That the said Farm and Lands are holden of him, or of his said Mannor of V. and that the Owner and Proprietor of the said Farm and Lands, is dead without Heir, general or special; and that the said Farm and Lands are Escheated unto him, and thereupon; and hath upon such pretence seized, or intends to seize the said Farme and Premisses into his hands, as an Escheat. and so to hold the same to his own use. And the said P.B. by the combination aforesaid, doth claim such of the Lands [illegible] given, limited, and appointed, to, and for the Charitable Uses aforesaid, as doe lye intermixed with the Glebe-Lands of the Rectory, as belonging to him, as Rector of V, aforesaid. And he the said Confederate J. H. doth claim such of the said Lands as lye mixt with, and among his Lands, as his own proper Lands, and all their pretences and doings are by the Confederacy and Combination aforesaid, designed, done, and contrived; to the intent and purpose, that the said Confederates may divide and share the said Farme and Premisses, and the Rents, Issues, and Profits thereof, among themselves, and utterly to defeat and deprive the said poor Scholar, and poor people thereof.

Now Forasmuch, as all the Deeds, Evidences, and Writings, which do manifest the truth of the matters, and things afore herein set forth and declared are in the hands and power of the said Confederates, or some of them, or of some other person or persons, by, or with their, or some of their party or privities, or consents, so as his Majesties said Attorney, cannot without the same, give such evidence, as may induce a Jury to find the same upon their Oaths; and so much artifice having been used to defeat and evade the said Charitable Uses, that there is no way to discover the truth and certainty of the Premisses, or to obtain effectual relief in the Premisses, by any proceeding upon the Statute for Charitable Uses; nor is it possible to settle any one of the said Charitable Uses, without setling them all, which cannot properly be done by the said Colledge, or either of the said particular Parishes alone, or joyntly, and so any Decree to be made by Commissioners, cannot well be gained; and if it might, yet upon Exceptions put in thereunto, the same may be rendered ineffectual. And this being a Matter and Cause of publick concern, and for the final settlement of the aforesaid several Pious Uses, cannot be done in any ordinary course of Law, but it is properly to be setled by this Honourable Court; and the rather, for that it is not known to his Majesties said Attorney, or the said Relators, in whom the present Estate and Fee of the Premisses is. To the end therefore, that a full

YALE LAW LIBRARY

diſcovery of all and every the matters and things aforeſaid, may be made, and that the ſaid Charitable Uſes may be preſerved and ſetled, according to the intent of the ſaid R. R. AND to the end, that all the Deeds, Evidences, and Writings that do concern the ſaid Farm, and Lands, may be ſet forth, and diſcovered, and may be diſpoſed of, as this Honourable Court ſhall think fit. And that the ſaid Farm and Lands may be ſetled in Truſtees, and the Rents, Iſſues and Profits thereof applied, and diſpoſed of, in, and for the Charitable Uſes aforeſaid; and that proportionably, according to the ſums to them ſeverally, at firſt limited, aſsigned, and appointed, as is aforeſaid, according to the charitable intention of the ſaid R. R. And to the end alſo, That the Lands, late of the ſaid R. R. that cannot for the preſent be certainly diſcovered, may be ſet out, bounded, and aſcertained, or otherwiſe, that the like number of Acres, or Lands of the ſame value, with ſuch of the ſame Lands as lye intermixed with the Lands of the Lord of the ſaid Mannor, or with the ſaid Glebe-Lands, or the Lands of the ſaid J. H. may be ſett out and laid together in ſome particular place and part, and ſo held and enjoyed, to, and for the ends and Charitable Uſe and Uſes aforeſaid. And that the ſaid Confederates, and unknown perſons, when they ſhall be diſcovered, and their names inſerted into this Information, may ſet forth and diſcover, where, and in whoſe hands, and power, the antient Charters and Evidences of, and concerning the ſaid Farme and Premiſſes, are, and the Dates and Contents thereof, and who hath received the Rents, Iſſues, and Profits of the ſame Premiſſes ever, ſithence the determination of the ſaid Demiſe thereof, for the ſaid Term of 99 years, which did end in the ſaid year of Our Lord God, &c. aforeſaid, and by, and under what Right and Title, and how the ſame hath ſince that time been diſpoſed of, and what Title, Intereſt, or Eſtate, they, or any of them have, or claim to have of, into, or out of the ſaid Farm and Premiſſes, or any of them; and by, from, or under whom, and by what Conveyance. And that the ſaid Confederates may ſet forth and diſcover what the true yearly value of the ſaid Farme and Premiſſes now is, and hath been, ever ſince the ſaid year of Our Lord God, &c. And laſtly, That the ſaid Charitable Uſes may be preſerved, maintained, and continued to all ſucceeding Generations, and may be ſetled, eſtabliſhed, and confirmed, by the Decree of this Honourable Court. May it pleaſe your Lordſhips, to grant unto His Majeſties ſaid Attorney, His Majeſties moſt Gracious Writ, or Writs of Subpœna, to be directed to them the ſaid, &c.

The

The Replication of Sir *J. P.* Knight and Baronet, His Majeſties Attorney-General Complainant at, and by the relation of *A. B.* Doctor in Divinity, Maſter of *M.* Colledge in the Univerſity of *O.* and of the Fellows and Scholars of the ſame Colledge, to the joynt and ſeveral Anſwers of *W. T.* Gent. *R. L.* and *J. C.* Defendants.

HIs Majeſties ſaid Attorney for Replication, ſaith, and will averre, That all and every the Matters and Things, in, and by his Information in this Honourable Court alledged, are true, in ſuch ſort, manner, and form as the ſame are therein ſet forth; and that he is, and ſhall be, at all times ready to prove the ſame, in ſuch manner as this Honourable Court ſhall award; and thereupon prayeth Relief in the ſame, as he hath in, and by his ſaid Information before Prayed. And for further Replication to the Anſwers of all the ſaid Defendants, and particularly, of the ſaid W. T. and R. L. who acknowledge themſelves to be Truſtées of the Farm and Lands in queſtion in this Suit; His Majeſties ſaid Attorney ſaith, That the ſame Farme and Lands, were wholly given and intended by R. R. the Donor thereof, to the Charitable Uſes in the Information mentioned. And although the ſaid Donor did make, and direct a ſpecial diſtribution of the ſum of 6 l. 10 s. per ann. which was the then preſent Rent thereof; yet that Leaſe being long ſince determined, and the ſaid Farm and Lands ſince increaſed to the value of 30 l. per ann. and now Lett for ſo much, as by the Anſwers of the ſaid four Defendants, as well as of the other Defendants doth appear, and it not appearing by the ſaid Defendants Anſwers, or any of them, that it was the intent of the Donor, that any part of the Rents, Iſſues, or Profits of the ſaid Farm, or Lands, ſhould be converted by his Truſtées, to their own uſe, or to any other uſe; or that his Heirs, or that any other perſon or perſons, but ſuch as in the ſaid Information are mentioned, ſhould have any benefit thereof. Therefore his Majeſties ſaid Attorney doth averre, that the whole increaſe and benefit raiſed, and to be raiſed by the ſaid Farm and Lands, do ſince the ending of the Leaſe thereof in being, at the time of the death of the ſaid Donor, ſhould have been, and ought to be diſtributed to the Charitable Uſes in the ſaid Information, ſpecified, according to ſuch proportions, as in the ſaid Information is mentioned. And that the ſaid Defendants, W. T. and R. L. ought to account for, as well ſuch Fine or ſum of Money as hath been raiſed, or made by them, or any others with them, by letting of any new Leaſe thereof; as alſo for the ſurpluſage of the ſaid Rent of the ſaid Premiſſes, ſo demiſed by them, over and above the ſaid ſum of 6 l. 10 s. yearly, paid, by them to the Charitable Uſe aforeſaid, during the time, they, or any of them, have received the increaſed Rent

of

of 30l. per ann. for which the ſaid Lands have for divers years paſt, and are now ſtill Demiſed, and which hath bin yearly paid and anſwered for the ſame; and the ſaid whole Rent and Profits of the ſaid Lands received by them, or any of them yearly, ever ſince the new Letting thereof, after the expiration of the ſaid antient Leaſe in being, at the time of the death of the ſaid Donor, ought to be all applyed to the Charitable Uſe and Uſes in the ſaid Information ſpecified in ſuch ſort, as is therein ſet forth, and to no other uſe; the ſaid Attorney-General averring, and being ready to prove to this Honourable Court, that the ſaid Truſtées, or any of them, or any other perſons named, or ſuppoſed Truſtées with them, did neither in any one year hitherto, ſince the ending of the ſaid antient Leaſe, apply more than 6l. 10s. thereof, to the ſaid Charitable Uſes, in the ſaid Information ſpecified, but in the breach of the Truſt in them repoſed, have, or ſome of them have miſ-imployed, and miſ-converted the ſame overplus-Money, amounting in that time, to above 460l. to other uſes, according to their own wills and pleaſures. with this alſo, That the ſaid Truſtées, in further breach of the ſaid Truſt, have ſuffered the Houſe and Buildings, of, and belonging to the ſaid Farm and Lands, to fall into great ruine and decay, for want of timely repairing and amending, either by the Tenant or Tenants thereof, for the time being, or by their, or ſome of their care, as ought to have bin, and the ſame Houſe and Buildings are now very ruinous, and in great decay; nor are there ſufficient Covenants in the Leaſe now in being, by them the ſaid Truſtées, newly made and granted, to compel the preſent Tennants or Occupiers of the ſaid Farm-Houſe and Buildings, to repair the ſame, which is alſo contrary to the Truſt in them repoſed, with this alſo, that it appeareth by the Anſwers of all the ſaid Defendants, and his Maj[illegible] ſaid Attorney, is ready to prove, that the Lands ſo given, and appointed by the ſaid R. R. to the Charitable Uſes aforeſaid, do lye diſperſedly in the ſeveral fields of V. in the County of H. and in ſeveral parcels in each of the fields in V. aforeſaid, and that the Boundaries of the ſame, and other mens Lands in the ſaid fields, are ſo defaced, ploughed up, and confounded, that the ſame, and other mens Lands do lye ſo confuſed, and intermingled together, by reaſon of the defacing and ploughing up of the ſaid Boundaries; That it is very hard and difficult, if not impoſsible, now to diſtinguiſh the ſame from other mens Lands there, or one mans Lands there from anothers. And therefore the ſaid Attorney-General prayeth, that as well the ſaid Houſes and Buildings belonging to the ſaid Farm, may be ſpeedily repaired; and that the ſaid Truſtées, or ſuch of them, as have received by Fine or Rent, the Profits of the ſaid Lands and Premiſſes, may make and give a true account for the ſame, and for what hath bin received by them, or any of them; and that the ſame may be

applyed

applyed to the Charitable Use and Uses aforesaid. And further, That for the better ascertaining of the Lands belonging to the said Farm, and lying at present so intermixed with the Lands of other Men in V. aforesaid, may be forthwith set out by Mears, and Bounds, whereby the same, for the future, may be certainly known and distinguished from all other mens, there, or otherwise, as in the answers of the said several Defendants, is consented unto; that the like number of Acres, as are belonging to the said Farm, in every of the several fields of V. aforesaid, may, without prejudice to any other persons, owner or owners of Lands in the same fields, in each field, be set out, and laid together, and, by consent of all other owner or owners of Lands in the said Fields, be allotted, allowed, and owned as Lands of and belonging to the said Farm, and to be, in all times hereafter, used and demised with the same; and that if any part of such Lot happen to be the Lands of any other owner or owners of Lands there, such owner or owners may, by their free consent and consents, accept of such other Lands belonging or supposed to belong to the said Farm, in each of the said fields, as by like consent shall be laid or sett out in lieu thereof; whereunto the said Attorney-General, for and on the behalf of the said Relators, is, and doth hereby declare himself to be willing. And further prayeth, That, to this end, a Commission may be awarded to Gentlemen in the said County, to be approved of by this Honourable Court, for the surveying the same Lands, and setting forth the particular parcels thereof, or laying them; with power also to Treat with all and every owner or owners of Lands in the said Fields of V. that may be concerned in the Premisses, and to take and receive their consent and consents, to such proceeding and setting out of Lands as aforesaid, as shall, or may be made or agreed on by the said Commissioners, or so many of them, as in that behalf, shall be thereunto impowred, and that if need be, and this Honourable Court shall so think fit, such person and persons, owner and owners of Lands, as shall or may be concerned in the Premisses, and shall give their consents to, or before such Commissioners as aforesaid: and are not already parties to the said Information, may have their names thereunto inserted, and may, by their several Answers, further testify their several consents to such setting out or laying together of Lands, to belong unto, and be used with the said Farm for the future; and of their accepting of other Lands in lieu thereof, as aforesaid; That this Honourable Court may proceed to settle the same by consent, finally by the Decree of this Honourable Court, as to this Honourable Court shall seem most meet. And for the satisfaction of all persons concerned, or to be concerned therein: without this, that any other matter or thing, in any of the Answers of any of the said Defendants, contained material, or effectual in the Law for him the said Attorney-General, to reply unto, and not be-

fore

fore herein ſufficiently replyed unto confeſſed and avoided, traverſed or denyed is true, in ſuch manner and forme as the ſame are, in any of the Anſwers of the ſaid Defendants, ſet forth, and alledged. All which matters and things the ſaid Attorney-General is ready to averre and prove, as this Honourable Court ſhall award, and prayeth Reliefe, as in his ſaid Information he hath formerly prayed.

CHAP.

CHAP. VII.

Of Charitable Uſes.

TO give you now a briefe account of all that is before laid down, and to make Additions of ſome other things neceſſary to be known for the further Expoſition of the Statute of 43 Eliz. Chap. 4. And for the further opening and clearing of our ſubject matter in hand, we are to know; That there are theſe three things mainly conſiderable therein, and to be ſpoken unto:

1. What ſhall be ſaid to be a Charitable Uſe within the Intent and Purview of this Statute.

2. What ſhall be ſaid a Miſimployment of ſuch Charitable Uſe.

3. What is to be done, in caſe of ſuch miſimployment, for the redreſs thereof.

And in the firſt of theſe, we ſhall ſhew what is not; and then what is a Charitable Uſe: and under it we ſhall have occaſion to ſhew what a Superſtitious Uſe is.

And in the laſt of theſe, we ſhall have occaſion to conſider of the Commiſsion it ſelf for Charitable Uſes: And therein. 1. Of the making. 2. Of the execution; and then proceed in the execution of it from the beginning to the end. And therein we ſhall ſet forth, how the Commiſsioners for this Uſe are to proceed: Wherein they are to intermeddle, and whereof they are to enquire; and how, And what the Jurors that are before them are to do therein; what order or Judgement they are to make, and how they are to certify it. What courſe the party grieved therewith is to take for his relief. What the Lord Chancellor, or Lord Keeper of the Great Seal, or Chancellor of the Dutchy, may do thereupon. And what remedy is againſt their final Decree, if it be diſliked.

SECT I.

What ſhall be ſaid to a good Limitation or Appointment by Deed or Will, to a *Charitable Uſe*, to be relieved by the Statute of 43 *Eliz. Chap.* 4.

IN this we are to know, That a Charitable Uſe may be raiſed by a Deed in Writing, by a Will, by a Contract, or by a Limitation, or Appointment ſome other way.

But for the firſt of theſe Queſtions; What ſhall be ſaid a good *Charitable Uſe* within the Purview of this Statute of 43 *Eliz. Chap.* 4. *Part* 4.

We ſhall open this, firſt negatively, by ſhewing what is not a Charitable Uſe, albeit it may look ſomewhat like to it.

And then Affirmatively and Poſitively, by ſhewing what is, and is to be accounted, a Charitable Uſe within the intent and meaning of this Statute.

For the Firſt, What is not a Charitable Uſe, we are to know, That if any Mannors, Lands, Tenements, Rents, Annuities, Penſions, Profits, Hereditaments, Goods, Chattels, Money or ſtocks of Money, have been, or ſhall be given, limited, appointed or aſsigned to have continuance for ever, or for a time only, towards, or for the finding, or maintainance of a ſtipendary Prieſt; or for the maintainance of an Anniverſary, or Obit, or of any Light or Lamp in any Church or Chappel, or any like intent; Theſe, and ſuch like Gifts and Diſpoſitions as theſe, are not to be accounted Charitable Uſes (intended by the Purview of this Statute) but Superſtitious Uſes intended by the Statute of 1 Ed. 6. Chap. 14. What is diſpoſed and ſetled in any ſuch courſe, is forfeit, and given to the King.

Part 2. And therefore, if at any time heretofore, any ſuch thing hath been given, or hereafter ſhall be given by any man, by his laſt Will, at his death, or by Act executed in his life-time to any perſon, Sole, or Corporate in Fee-ſimple, Fee-tail for life or years, to the intent, or upon condition to find a Chaplain, and have the Service of a Prieſt to ſay Maſs, or to have a Prieſt or other man, to pray for the Soul of any dead man in ſuch a Church or other place; or to have or maintain perpetual Obits, Lamps, or Torches, &c. to be uſed at certain times to help to ſave the Souls of Men, out of the ſuppoſed Purgatory; Theſe, and ſuch like Uſes as theſe are not, nor ſhall they be ſaid to be Charitable Uſes within the Intendment of the Statutes, made and provided for the preſervation and execution of ſuch Uſes. For theſe are looked upon, and accounted in Law, for Superſtitious Uſes. And therefore all theſe and ſuch like Uſes as theſe are void. And the Lands ſo given to ſuch Superſtitious Uſe, are by other Statutes given and forfeited to the King, and he ſhall have them. And yet ſo, That if there be any Charitable Uſe intermixed with the Superſtitious Uſe, and they may be diſtinguiſhed, there the King ſhall have only ſo much as is given to the Superſtitious Uſe, and not that which is given to the Charitable Uſe alſo. And for this, See Cook 4. 104. Adams and Lamberts Caſe. Stat. 15. R. 2. Chap. 5. 37 H. 8. Chap. 4. 1 Ed. 6. Chap. 14. Crook 1 Part. 180. Bridgm. Rep. 105. Crook 2 Part, 51, 52. Cook 4. 104. Where (to our preſent purpoſe) theſe things are agreed upon, 1 Ed. 6. 14.

Superſtitious Uſes.

1. That if A. Deviſe to any of his kindred to Superſtitious Uſes, and though he hath limited his kindred to pay certain ſums of Money to thoſe Uſes, yet theſe Lands are given to the King. But if it be ſo limited, that his friends ſhall have

Part 3.

the

the reſidue of the Profits above the Superſtitious Uſe, this had ſaved the Land.

2. That a Demiſe for life, or Gift in Tail, may be within the Statute to raiſe a Superſtitious Uſe.

3. That the giving of Lands upon condition to find a Prieſt, is to a Superſtitious Uſe, within the words (Lands given for the finding of a Prieſt.)

4. That if one give 20 l. per ann. for the finding of a Prieſt, and appoint to the Prieſt 10 l. per ann. In this Caſe all ſhall go to the King, for the reſidue ſhall be intended for the finding of neceſſaries. Otherwiſe it is, if a Condition be annexed to the Gift, to give 10 l. per ann. to a Prieſt, for there the King ſhall have but 10 l.

5. If Land of 20 l. per ann. be given to find a Prieſt with 10 l. thereof, and that the other 10 l. ſhall be to the Poor; In this Caſe the King ſhall have but 10 l. But if it be for the finding of a Prieſt, and maintainance of poor Men, without ſaying how much the Prieſt ſhall have; In this Caſe the King will have all.

6. If Land of 20 l. a year be given for finding a Salary for a Prieſt with 10 l. of it, and there is alſo another good Uſe limited with it; there the King will have but 10 l. although the other neceſſaries are to be found for the Prieſt: for a good Uſe in certain, ſhall be preferred before a Superſtitious incertain Uſe. But if nothing in certain be limited to the Prieſt, all the Land will go to the King. Good Uſes ſhall be preferred.

7. If Land be given to find a Prieſt, the King will have it; but if a Prieſt have but a ſtipend out of the Land, the King ſhall have but that ſtipend.

8. When a certain ſum is limited to a Prieſt, and other Good Uſes, are alſo limited, which depend upon the Superſtitious Uſe; all in this Caſe is given to the King.

9. If all the Uſes be Superſtitious, of what certainty ſoever they are, the whole Land is given to the King. Otherwiſe it is, if there be any Good Uſe.

10. That Prayers for the Dead out of, as well as in a Church or Chappel, may make the Uſe Superſtitious. *Part* 4.

11. That other like things to theſe may make the Uſe Superſtition, and put the Land charged with it into the Kings hands. See much more to this purpoſe, in Adams and Lamberts Caſe. Cook 4. 104. Superſtitious Uſes.

12. Where one Deviſed Money to a Dean and Chapter, to the intent to find a Chantery in their Church perpetually, and an Obit for the Soul of the Donor, and that the Chauntry Prieſt ſhould have 40 Marks yearly, &c. the 400 l. was paid, and the King gave Licence to them to purchaſe Land to that uſe; which they did, and made Ordinances for the ſetling of the Service; the Dean and Chapter laid out Money for the maintainance of a Prieſt and an Obit: In this Caſe it was ruled by the major part of Judges, That this was no Chaun-

try in fact, nor in reputation, and therefore not given to the King by the Statute of 1 Ed. 6. for in this Caſe, no Lands were given by the Founder, and the Dean and Chapter made no Chauntry, nor appointed any Lands thereto, but bound their Goods to pay a yearly ſum to the Prieſt, &c. And that which was paid, was not paid out of the Land only, but out of all their poſſeſsions. And in Caſes where no Lands in certain are given to ſuch Superſtitious purpoſe, nor imployed for that purpoſe, there will be no forfeiture of it to the King, nor may have it. Crook 2 Part 51. M. 2 Jac. C. B. Holloway and Watkins Caſe.

13. If Lands, to the value of 14 l. a year, be given to the Dean and Chapter, to pay 10 Marks a year to a Prieſt, to ſing, &c. and the other profits for an Obit, and they maintain the Prieſt with 10 Marks, but the Obit was not obſerved within 5 years of the Statute: In this Caſe, the Rent of 10 Marks is only given to the King, and not the Land, by 1 Ed. 6. for the Land is the Dean and Chapters, Dyer 368.

Mixt Uſes. 14. In Crook 1 Part, 180, 181. It is reſolved, that Lands given to the maintaining of a Prieſt to ſay Maſs, &c. and he to have yearly 3 l. 6 s. and that what ſhall be above, ſhall go to the repairing of the Church; That this is not given to the King, by 1 Ed. 6. Chap. 14. See for this, Chap. 6. Caſe 7.

Charitable Uſes. 15. That ſuch like Uſes, as are theſe Superſtitious Uſes, and are not judged to be Superſtitious Uſes in Law, theſe will probably happen to be Charitable Uſes within this Statute.

And in all Caſes generally, the Uſes will be good Charitable Uſes. And there Lands, Tenements, Rents, Annuities, Profits, Hereditaments, Goods, Chattels, Money, and Stocks of Money, ſhall be ſaid to be given to Charitable Uſes, where they are given, limited, or appointed by Act, executed by the party in his life-time, or by his laſt Will and Teſtament at his death, or otherwiſe, for the relieving, maintaining, repairing, educating, preferring, ſupporting, aiding, helping, reforming, and eaſing, in the Caſes hereafter mentioned, viz.

Part 5. Charitable Uſes, what.

For relief of aged, impotent, and poor People: or for maintainance of ſick and maimed Soldiers and Mariners. Or for the erecting or maintainance of Free-Schools, or other Schools of Learning. Or for the maintainance and help of Scholars in the Univerſity, Or for, or towards a Relief, Stock, or Maintainance for Houſes of Correction. Or for repair of Bridges, Ports, Havens, Cauſways, Churches, Sea-banks, and Highways, or either of them. Or for the education and preferment of Orphans. Or for the Marriages of poor Maids. Or for the ſupportation, aid, and help of young Tradeſ-men, Handicraftſ-men, and perſons decayed. Or for relief, or redemption of Priſoners or Captives. Or for aid or eaſe of any poor inhabitants, concerning payment of Fifteens, ſetting out of Soldiers, and other Taxes. Where any thing is given to any

ſuch

any ſuch Uſe as this, this will be a Charitable Uſe, See for all theſe the Statute it ſelf; of 43 Eliz. Chap. 4. and Stat. 1. Ed. 6. Chap. 14. Chap. 6. Caſes 5, 6, 8, 10, 15, 17, 19, 27, 30.

Other Proviſions, Gifts, and Limitations there are, which ſeem to be within the intent and purview of this Statute alſo: and therefore it ſeems, that an aſsignation of Lands, to continue in ſucceſsion to a Preacher, for the keeping up of Preaching, as well as to a School-maſter, for the keeping up of a School, is within the account of Charitable Uſes. See for this Statute 1 Ed. 6. Chap. 14. So the Endowment of a Vicaridge, for the increaſe of the Miniſters maintainance, ſeems to be a uſe of this nature. See for this Stat. 1 Ed. 6. Chap. 14. And it hath been ruled and Decreed, That Money given to maintain a Preaching Miniſter, is a Charitable Uſe; that is, within the equity of the Statute. See it Caſe 35. of Chap. 6. So to maintain a Schoolmaſter in a Pariſh, &c. See for this, Chap. 6. Caſe 7. So for the ſetting up of an Hoſpital for the relief of poor people, is a Charitable Uſe, within the equity of the Statute. See for this Chap. 6. Caſe 38. 40. So for the King to Found a Free-School, and make it a Corporation of Guardians, Maſter and Uſher, to give Chauntry to them and their Succeſſors, to maintain them, and certain poor people under them. See for this, Chap. 6. Caſe 39. So for the building of a Seſsions-houſe for a City or County, the making of a new, or repair of an old Pulpit in a Church: or the buying of a Pulpit-Cuſhion, a Pulpit-Cloth; or the ſetting up of new Bells where none are, or amending of them, where they are out of order.

Theſe, and ſuch like Proviſions, Gifts, and Limitations, ſeem to be reckoned as Charitable Works, by the Judgement of the Law: And (as it ſeems) what is given to any ſuch uſe, ſhall be under the Surveigh, and within the intent of this Statute, to be ordered by Commiſsioners for Charitable Uſes. See for this, Popham Rep. 139. And that the Statute is taken by Equity in this, See Chap. 6. Caſe 35.

But this we are to take, as out of queſtion; That a diſpoſition of Lands, Rents, Money, Goods, &c. may be by Act, executed in a man's life-time, or by his Will at his death, to Charitable Uſes, within the Intent and Purview of this Statute, and under the Power of Commiſsioners for Charitable Uſes, to Order and Decree; albeit there be defect in the Deed, or in the Will, by which they were firſt created and raiſed; either in the party truſted with the Uſe, where he is miſ-named, or the like; or in the parties for whoſe Uſe, or that are to have the benefit of the Uſe, as where they are not well named, or the like; or in the execution of the Eſtate, as where Livery of Seiſin, or Attornment is wanting, or the like. And therefore if a Copyholder doth diſpoſe of Copyhold Land to a Charitable Uſe,

Gifts not good in Law, yet good to this purpoſe.

Uſe without a Surrender, or a Tenant in Tail convey Land to a Charitable Uſe without a Fine, or a Reverſion be granted without Attornment, or Inrollment; and in divers ſuch like Caſes, where the Donor is of capacity to diſpoſe, and hath ſuch an Eſtate, as is any ways diſpoſable by him. this Statute ſhall ſupply all the defects of Aſſurance; for this is a good Limitation and Appointment within the Statute. See for this, Chap. 6. Caſe 40.

Infant, Lunatick, or Feme-Covert. And yet if an Infant, Lunatick, or Feme-Covert, do by Will, or by Deed, give any thing to ſuch Uſe, this will be void, and is not to be ordered good by the Commiſsioners: And if it be ſo, the Lord Chancellor will vacate it. See for this, Chap. 6. Caſe 17, 37, 40. Hob. Rep. 136.

Part 6. But it hath been agreed and reſolved, to be within the Intent and Purview of this Statute, and under the Power of Commiſsioners upon the ſame; and upon Appeal, the Lord Chancellor, &c. to Order and Decree the ſame as Charitable Uſes, in all the Caſes hereafter following; That is to ſay,

Charitable Uſes. Where one gives 20 l. a year to a Preaching Miniſter, leaving Lands and Goods enough to do it. See for this, Chap. 6. Caſe 35. So where one gives Land to the Church-wardens of a Parish, (who by Law are not capable to take it by Grant) to Charitable Uſes. See for this, Chap. 6. Caſe 33.

So to a Corporation to ſuch Uſes by a wrong name. See this Chap. 6. Caſe 37.

Rent-ſeck. So where a Rent-ſeck is given to a Charitable Uſe. See for this, Caſe 15. in Chap. 6.

So where Land is given to repair Highways, to the Pariſhioners of Dale.

Mixt Uſes. So if Land be given for relief of Poor; and alſo that the Schoolmaſter or Poor ſhall pray for the Donors Soul; In this Caſe it is ſaid, That the Charitable Uſe is the Principal, and that this ſhall preſerve the Land. See for this in Chap. 6. Caſe 7. Crook 1. 180, 181.

So if a Deviſe be of Copyhold Land, to ſuch a uſe, and this be done without any Surrender, this will be good as an Appointment and Limitation within the Statute, and may be decreed by the Commiſsioners. See for this, Chap. 6. 14 15. 16.

Copyhold-Land. And if it be an Entail of the Copyhold Land, and a Recovery to be ſuffered within the Manor, according to the Cuſtom, and there be a defect in the Recovery, and this is to Charitable Uſe; this will be a good diſpoſition within the Statute, and may be ordered by the Commiſsioners accordingly. See for this, Chap. 6. Caſe 17. 25, 28.

If one with his own Money, purchaſe Copyhold Land, in the name of two of his Children within age, and by his Will doth deviſe a Rent of 40 s. a year out of this Land, for relief of the poor of the place, to one and his Heirs, and takes the profits of the Land all his life. In this, albeit there be no

Surrender

Surrender, and the Deviſe, Rigore Juris be void; yet this is a good Diſpoſition, to this purpoſe, for the Rent, and may be ordered by the Commiſsioners. See for this Chap. 6. Sect. 3.

So if one have ſet up an Almshouſe, that hath Land he lets for 10 l. a year, worth 40 l. a year; and he by his Will, deviſeth the Rents of that Land, for maintainance of the Poor in that Almshouſe: this is a Gift to Charitable Uſe, and all the Profit of the Land ſhall be imployed to that uſe, See for this, Chap. 6. Caſe 9. That ſuch a Decree made by the Commiſsioners, was confirmed by the Lord Keeper.

So if one deviſe his Land to ſome of his Friends, and their heirs in Truſt, to maintain a Preacher, Schoolmaſter, and poor people in Dale, and appoints what each ſhall have; all but 35 l. but the overplus ſhall go to Charitable Uſe, to increaſe the number of the Poor, See for this, Chap. 6. Caſe 10.

So if one by his Will appoint, that his Executors ſhall deviſe a way, that a Preacher ſhall be found for ever, to preach the word of God in the Church of Dale, four times in the year, and to have, for his labor, 10 s. for every Sermon. So to erect a Free Grammar-School. See for this, Pophams Rep. 6. Gibbons Caſe.

So if one by Will, deviſe his Land in Eſſex to the Parſon and Church-wardens of S. in Thameſtreet, London; to the end that they, and four honeſt men of the Pariſh, ſhould ſell the Land, and imploy the Money for the Poor, and Charitable Uſes in that Pariſh: this is a good Charitable Uſe within this Statute. See for this, Chap. 6. Caſe 28.

So if one deviſe 10 l. a year for ever, out of his Land, to maintain two Scholars in Oxford and Cambridge. See for this, Chap. 6. Caſe 29.

So a Deviſe of Land or Money, to the poor people maintained in the Hoſpital of St. Lawrence in Reading, is good within this Statute, Chap. 6. Caſe 30.

So a deviſe of Land to the uſe of an Hoſpital, is a Charitable Uſe within the Statute, See for this, Chap. 6. Caſe 38.

So if Soldiers and Mariners having much in arrear, agree to take halfe, and to leave the reſt in their Captains hands, to be imployed for relief of maimed Soldiers and Mariners upon the Seas, their Wives and Children; which is ſo done, this will be a Charitable Uſe, under the Order of the Commiſsioners, and Affirmance of the Lord Keeper. See for this, Chap. 6. Caſe 13. and Moors Rep. Caſe 1152.

So a Deviſe by Will to the Maſters and Fellows of St. Johns Colledg in Cambridge, for maintainance of the Scholars there, is a good Gift within the Statute, Chap. 6. Caſe 16.

So a Deviſe by Will to Jeſus Colledge in Oxford, and their Succeſſors, to find a Fellow there, of the Donors Blood, is good within the Statute, See for it Chap. 6.

So where a Feme-Covert, an Adminiſtratrix to her firſt husband, married again, do, during her ſecond Coverture, make her

her Will, and thereby give a part of that Eſtate to Charitable Uſes, and dye, living her Husband, if there be Aſſets of the Eſtate to diſcharge it at her death, See for this, Chap. 6. Caſe 11. Moors Rep. Caſe 1111. Damus Caſe.

So if one by Will Deviſe a Houſe, he hath to his Wife for life, and after her decease, to four Feoffees, to see it repaired, and with the reſt of the Profits, after their diſcretion, to beſtow upon the repair of a High way in ſuch a place, Moors Rep. Caſe, 1251. See Chap 6. Caſe 41. Rolts Caſe.

So if a Debt owing by Judgement, Statute, Bond, or Recognizance, (which is a thing in action) be given to Charitable Uſe; this is good in this Caſe, and may be ordered by the Commiſsioners, Chap. 6. Caſe 21. 24.

So a Deviſe of Land to build a School, is a Good Uſe within this Statute. See for this, Chap. 6. Caſe 24.

So Money given for the good of the Church of D. See it Chap. 6. Caſe 26.

So if one by Will deviſe his Land to be ſold, and the Money to be diſtributed to 20 of the poor of his kindred; this is a Good Uſe within this Statute.

All theſe are agreed to be good Charitable Uſes within the Statute, to be ordered by the Commiſsiones of Charitable Uſes, without Relief, as to that point to be expected with the Lord Chancellour upon Appeal.

If a Limitation of Lands, Rents, &c. be to keep and find an Obit or Anniverſary, in the parish of E. for the Souls of ſuch and ſuch, and all Chriſtian Souls, or the like; and that ſo much out of the Land ſhall be ſpent yearly about it; but all the reſt of the Profits, ſhall go to the repair of the Highways, or ſuch like uſes; here, this is a good Charitable Uſe for all the overplus. See Cook 4. Adams and Lamberts Caſe.

SECT. II.

How the Gift or Limitation of a *Charitable Uſe* by Deed or Will, ſhall be taken.

Gift of the Rent out of Land.

If one by Will deviſe the Rents of his Land to a Charitable Uſe, by this the Land it ſelf is Deviſed. So of the Deviſe, that is of the Rents and Profits of his Lands. See for this, Chap. 6. Caſe 9.

Charitable Uſe within the Equity of the Statute.

If Money be given to maintain a Preaching Miniſter, this albeit it be not named in the Statute, yet it is within the equity of the Statute; and the Commiſsioners may order the Executors to pay it for Charitable Uſe. See for this, Chap. 6. Caſe 35.

Gift of a Rent.

If one Deviſeth the Rent of his Land to a Charitable Uſe; this ſhall be taken largely for a Deviſe of the Rent then reſerved, or afterward to be reſerved upon an improved value. See for this, Chap. 6. Caſe 9, 12.

The

The word (Given) in the Statute, extends as well to Gifts after, as to Gifts before the making of this Statute. See for this, Chap. 6. Caſe 2. (*Given*) in the Statute Expound.

Where no Uſe is of Land mentioned nor directed in the Deed, by which it is given, it ſhall be to the uſe of the Poor, albeit the Feoffees be Gentlemen, living out, and no Inhabitants within the Town. See for this, Chap. 6. Caſe 32. To what uſe a Gift ſhall be.

If a Gift or a Deviſe by Will, be of a Charitable Uſe, to a Corporation in Truſt for others; or to others in Truſt for a Corporation, and the name of the Corporation is miſtaken in the one, or in the other Caſe: yet it ſhall be good as to this purpoſe, and it will be within the Order of theſe Commiſsioners. See for this, Chap. 6. Caſe 16. Name of a Corporation miſtaken. Gifts to this Uſe good, though not good by Law.

If one Deviſe Land to one for life, the Remainder to the Church of St. Andrews in Holborn; In this Caſe the Parſon of the Church ſhall have this Remainder. 21 R. 2. Deviſe 17. Deviſe incertain.

If a Gift be thus; (For the good of the Church of *Dulk*) this will be good in this Caſe of a Charitable Uſe, notwithſtanding the incertainty. See it, Chap. 6. Caſe 26. And ſo by reaſon will it be in all ſuch like incertain Gifts. Gift to a Church.

If one Deviſe Twenty pound a year to a Preaching Miniſter, leaving Land and Aſſets in Goods; this is good, and the Executor will be forced by the Commiſsioners, and Lord Keeper, to buy ſo much Land, and to aſſure it to that uſe. See this, Chap. 6. Caſe 36. Twenty pound a year to a Preaching Miniſter.

If one ſeized of Copyhold Land in Tail, ſurrender it in Court to the uſe of his Will, and hath a common Recovery in the Manor, according to cuſtom; but there is Error in the Recovery: and after by Will, he deviſeth it to his Wife for life, the remainder to a Charitable Uſe: In this Caſe, albeit Recovery and Deviſe be void, as to the Eſtate for life; but the Deviſe will be good as to the Remainder for the Charitable Uſe. And albeit the Heir avoid the Eſtate-Tail againſt the Wife (as he may at Law,) yet the Remainder to the Charitable Uſe ſhall ſtand good, and be a Remainder without a particular Eſtate. See for this, Chap. 6 Caſe 16. For a Remainder, without a particular Eſtate. Gifts good by this Statute, though void in Law.

If one by Will deviſe Land to be ſold, and the Money to be diſtributed to 20 poor of his kindred. In this Caſe, and for this purpoſe; this will be a good Deviſe, albeit it do not appear that he hath any poor kindred. See for this, Chap. 6. Caſe 27. Deviſe incertain.

If one have Land in Eſſex, and deviſe it by Will to the Parſon, and the Churchwardens of L. in Thameſtreet in London, to the end, that they, and four honeſt Men of the pariſh, ſhould ſell the Land, and imploy the Money for the Poor and Charitable Uſes in that Pariſh: In this Caſe, albeit the Parſon and Churchwardens be not a Corporation to take Lands out of London, nor to ſell to ſuch Uſes; yet this is to this purpoſe, a good Deviſe, and they may ſell the Land. See for this, Chap. 6. Caſe 29. Deviſe to four Men, not a Corporation. Corporation.

Deviſe of a Rent, by a Nuncupative Will.

If one deviſe by parcel, 10 l. a year Rent out of ſuch Land, with 100 Marks in the Old Jury, London, for maintainance of two Scholars in Oxford and Cambridge, and bids the Scribener put it in Writing. This Nuncupative Will is good to this purpoſe, by way of limitation or appointment within the Statute, to create a Rent to a Charitable Uſe, albeit a Rent by Law cannot be created without a Deed or Will in Writing. See for this, Chap. 6. Caſe 29.

For a Rent deviſed.

Nomine pœnæ.

If one by Deed grant a Rent-ſeck out of his Land to Charitable Uſe, to begin after his death, and give Seiſin of it in his life-time; and in the Grant is a nomine pœnæ of 50 s. if the Rent be unpaid by the Heir after 14 days, this nomine pœnæ ſhall not light upon any other but the Heir: but into whoſe ſoever hands the Land comes, he is to pay all the arrears, for the Land is chargeable with it. And the Seiſin given by the Grantor in his life, before the Rent began, or was in Eſſe, ſhall be good, Chap. 6. Caſe 15.

Deviſe by an Infant, Feme-Covert, Lunatick, to this uſe.

If an Infant, Feme-Covert, Lunatick, or other perſon diſabled by Law to make a Will, and limit and appoint Lands to ſuch a Charitable Uſe; this will be void, and may not be affirmed; but is to be aboided by the Commiſsioners, and Lord Chancellor alſo. See for this, Chap. 6 Caſe 37, 40. Hobb. Rep 136.

Deviſe to this Uſe upon condition.

If one by his Will deviſe all his Land to an Hoſpital, paying after his death, 1000 l. where his Wife ſhall appoint, and the Hoſpital do pay the Money: In this Caſe the Commiſsioners are to Decree the Land to them.

If one by Will deviſe his Land to his wife for life, and after that, made A. B. &c. (as he called them) Feoffees to beſtow the Profits for the repair of High-ways there, he and his wife dye; In this Caſe, albeit the Deviſe be void, yet it is with the relief of the Statute of 43 Eliz. by the words limited and appointed to Charitable Uſes, Chap. 6. Caſe 40. Hobb. Rep. 136.

To a Corporation by a wrong name.

If Lands be deviſed to a Corporation by a miſtaken name, as to the Mayor and Chamberlain, for the Mayor and Commonalty of London; this is good within the Statute. See for this, Chap. 6. Caſe 38.

To a Corporation.

If one Deviſe to a Corporation, as the principal Fellows and Scholars of Jeſus Colledge in Oxford, to find a Scholar of his Bloud from time to time: In this Caſe, albeit the Deviſe be void in Law, becauſe it is a Corporation (excepted in the Statute of Wills) yet it is within the relief of the Statute of Charitable Uſes, by the words limited and appointed, See it in Chap. 6. Caſe 40.

Deviſe void in Law. good to this purpoſe.

Deviſe to a Corporation.

Deviſe of Capite-Land.

If one give to a Colledge by way of Deviſe in a Will, to a Colledge, to any Charitable Uſe; this (as to this purpoſe, to bring it within this Statute of 3 Eliz. 4. is good enough, but not good by the Statute of Wills) to a Corporation. So of a Deviſe of Capite Land for the third part. See for this,

Chap. 6.

Chap. 6. Caſe 17. But ſuch a Deviſe by Will made by an Infant, Feme-Covert, or Lunatick, is not good, albeit it be to ſuch a Uſe, is void, and not made good by the Statute of Wills, 32 and 34 H. 8. And yet if one had deviſed two parts of his Land by Will, according to the Statute, and after Deviſe a third part to a Charitable Uſe; It was held, this was not good: But at this day, now that the Tenure is gone, it ſeems to be good. See for this, Chap. 6. Caſe 18. 23. Deviſe by an Infant, &c. to ſuch a uſe

If a Deviſe be to a Corporation of Land, albeit in another Caſe it be not good; yet in ſuch a Gift to a Charitable Uſe, it is good enough to bring it under the Order of theſe Commiſſioners upon this Statute. See for this, Chap. 6. Caſe 22. Deviſe to a Corporation.

If a Deviſe be to the poor People, maintained in the Hoſpital of St. Lawrence in Reading (where the Mayor and Burgeſſes, capable to take in Mortmain, do govern the Hoſpital.) In this Caſe, albeit the Poor, not being a Corporation, are not capable by that name; yet the Deviſe is good, and the Commiſsioners may order him that hath the Land, to aſſure it to the Mayor and Burgeſſes, for the maintainance of the Hoſpital. See for this, Chap. 6. Caſe 30. Deviſe to ſuch as are no Corporation, good to this Uſe.

If a man Deviſe to a Charitable Uſe, within a Corporation; yet it ſeems good, and within this Statute. See for this, Chap. 6. Caſe 31.

If Land be given to the Churchwardens of a Pariſh, to a Charitable Uſe; In this Caſe, albeit the Deviſe be void in Law; yet it is a good limitation and appointment of it, to bring it within this Statute, Chap. 6. Caſe 34. See more, Chap. 7. Sect. 4. Part 4. Land given to Churchwardens.

The Power of the Ordinary is the ſame it was before the making of the Act. See the Statue of 43 Ed. 3. Chap. 4.

SECT III.

What ſhall be ſaid to be a Miſ-imployment of ſuch a Uſe; or Breach of Truſt therein.

IT ſhall be accounted and called a Miſ-imployment of a Gift or Diſpoſition to Charitable Uſes, in all Caſes, where there is found any breach of Truſt, Falſify, not Imployment, Concealment, Miſ-government, or Converſion in and about the Lands, Rents, Goods, Money, &c. given to the uſe, againſt the intent and meaning of the Giver or Founder.

As for example; If one have a Leaſe of Land, given to ſuch a Uſe, and he doth make waſte and deſtruction upon the Land, by cutting down and ſale of Trees, of Timber, eſpecially, if it be where he hath the Land at an undervalue, or the like; this is a Miſ-imployment: In this caſe, the Commiſsioners may Decree the Leaſe to be void and ſurrendred, and that the Leſſee ſhall make a Recompence. See for this, Chap. 6. Caſe 6.

To make Leaſes, or to Lett the Land at under-values of Fines or Rents, is held to be a miſ-imployment queſtionable, that the Commiſsioners may redreſs, by ordering the Tenant of the Land, or the parties truſted with the Uſe, as they ſhall ſee cauſe, to make it up. And in this caſe the Truſtees are not only to lett it at the value it is at the time of the firſt ſettlement, and raiſing of the Uſe, but at all times afterward; So that if the Land grow to be worth more by much then it was, and he Lett it at the old Rate; this is a miſ-imployment. See for this, Chap. 6. Caſe 6, 7.

To keep the profits of Land, or Money given to Charitable Uſe in ones hands, whether it be concealed or not, not to pay it when it is due, or convert it to other uſe, is a miſ-imployment within this Statute. See for this, Chap. 6. Caſe 6.

To convert or change the imployment to other uſes, then according to the intent of the Founder or Giver: As, if the Gift be to find a Preacher in Dale, and the Truſtees find a Preacher in Sale: If it be to find a Preacher, and the Truſtees imploy it to the Poor, or ſome other kind of uſe; Theſe and ſuch like Acts or Neglects of the parties Truſted with the Uſes, will ariſe to a Miſ-imployment, under the power and redreſs of the Commiſsioners for Charitable Uſes. Lanes Rep. 115.

See more for theſe things in the Statutes of 39 Eliz. Chap 6. 43 Eliz. Chap. 4. 9. Cook 2. Part Inſtitut. 710, 711.

SECT. IV.

What Remedy is to be had, where there is a Miſ-imployment of Land, or Goods, given to *Charitable Uſes*. And of the Commiſſion of *Charitable Uſes*, and all the Proceedings therein.

Part 1. If any Miſ-imployment be of any Lands, Moneys, Goods or Chattels, given to any ſuch Charitable Uſe as is aforeſaid, upon complaint thereof, unto the Lord Chancellor, or Lord Keeper, and to the Chancellor of the Dutchy of Lancaſter reſpectively, may within their ſeveral Juriſdictions, grant Commiſsions under their Seals, in order to relief, and the regulation of ſuch miſ-imployment. And theſe Commiſsions are called Commiſſions of Charitable Uſes.

And in the execution hereof, heed muſt be given to theſe two things: 1. The Commiſsion it ſelf. 2. The execution of the Commiſsion; that it be made and executed according to the Statute.

For the firſt of theſe, the Commiſsion it ſelf, care muſt be had,

As to the Commiſſion and Commiſſioners. 1. That there be in the Commiſsion four, or more Commiſsioners made; and any four whatſoever of them may make a Decree, and do any thing in execution of the Commiſsion; for none of them are of the Quorum.

2. One

2. One of the Commiſsioners named, muſt be the Biſhop of the Diocels (if any Biſhop be at the time of the ſealing of the Commiſsion,) or the Commiſsion is not good. And the reſt may be of the Chancellour of the Diocels, and others of good and ſound behaviour. But if the Biſhop be named in the Commiſsion, the execution may be any four of the reſt, without his preſence, or the preſence of the Chancellor. But if the See be void at the time of ſealing the Commiſsion, then the Commiſsion will be good, albeit neither Biſhop, nor Chancellor be named in the Commiſsion. And the Metropolitan in ſuch a caſe, where the See is void, need not be named. See for this, Chap. 6. Caſe 2. And if the Biſhop be named a Commiſsioner, and dye before the Certificate returned; This ſhall not avoid the Commiſsion: for the reſt of the Commiſsioners may proceed notwithſtanding. How it muſt be.

3. The Commiſsioners muſt be ſuch as have not any part of the Lands, or other things in queſtion, for they are not to be named; or if they be, may not ſerve as Commiſsioners. Part 2.

4. That the Commiſsion do mention a certain time, within which the Commiſsioners are to make their Order, Decree, and Certificate.

5. That the Commiſsoners do call the parties intereſted in the Lands, Goods, Money, &c. before them. See the Warrant for it, in Chap. 3. And yet if it be done without this, the Decree may be good. See Chap. 6. Caſe 3.

6. It will be their wiſdom alſo to call before them ſome of the Officers, as Conſtables, and Churchwardens of the place concerned in the uſe. See a Warrant for it in Chap. 3.

7. The Commiſsioners are four of them to ſend their Warrant to the Sheriff, to Summon a Jury to be before them when and where they appoint. See the Warrant in Chap. 3.

And at the time and place they are to call for the Return of it, to ſwear the Jury, and prepare the Inquiſition. See Chap. 3. Part 3.

Then at the time of their ſitting to execute the Commiſsion, theſe things are to be known:

1. That the Parties intereſted in the thing in queſtion, may have, and take their lawful Challenges againſt the Jurors, or any of them. As to the Jury and their Inquiſition.

2. That none that pretend Title to any of the Lands or Things in queſtion, is to be admitted a Juror, but may be challenged. And if choſen, they may not ſerve.

3. The Jury is to find, and to make return of the Caſe, as it is to the Commiſsioners by way of Inquiſition in Writing in Parchment.

And in their Enquiry and Preſentment, they are to heed theſe three Rules of Direction:

1. They are not to meddle with the Lands, Goods, or Money, of, or belonging, or appertaining to Colledges, Halls, or Houſes of Learning, within either of the Univerſities, the Colledge Of what Lands, Goods, Money, &c. they may enquire. Part 4.

Colledge of Weſtminſter, the Colledge of Eaton, the Colledge of Wincheſter, or to any Cathedral or Collegiate Church, nor to the Lands, Money, &c. of, or belonging to any City or Town Corporate, where there is a ſpecial Governor or Governors of ſuch Lands, &c. the Lands of, or belonging to any Colledge, Hoſpital, or Free-School, which have ſpecial Viſitors or Governors, or Overſeers appointed to them by their Founders; nor the Land, &c. of Purchaſors for valuable conſideration of Money or Land without fraud or Covin, that have no notice of the ſame Charitable Uſe: For the Commiſſioners themſelves have not to do herewith. And yet the Commiſſioners albeit they may not make any Decree againſt ſuch Purchaſors: yet may they make a Decree for recompence to be made by any perſon or perſons, who being put in Truſt, or having notice of ſuch Charitable Uſes, ſhall break the Truſt, or defraud the ſame Uſes by any Conveyance, Gift, Grant, Leaſe, Releaſe, or Converſion, and againſt his and their Heirs, Executors, and Adminiſtrators, having Aſſets in Law or in Equity, as Truſts, Confidences, and the like. Nor the Purchaſors of Lands, &c. aſſured, conveyed, and come to Queen Elizabeth, H. 8. Edw. 6. or Queen Mary, by Act of Parliament, Surrender, Exchange, Relinquiſhment, Eſcheat, Attornment, Conveyance, or otherwiſe. But if any ſuch Lands, &c. have, ſince the beginning of Queen Elizabeths Reign, been given, &c. to any of the Charitable Uſes before-mentioned. To all theſe this Act doth not extend. But ſee afterwards in Sect. 5, 6. how theſe things are to be taken.

Power of Commiſſioners to order a Recompence and amends.

2. They are not to enquire of Miſ-imployment of Uſes in another County, than that wherein the Lands given to ſuch Uſes do lye. See for this, Chap. 6. Caſe 24.

The Commiſsioners and Jury in the Execution of their Commiſsion, are to enquire of the Gift, Limitation, or purpoſe of the Giver, or Founder of the Charitable Uſe, where any Land, Rent, Goods, or Money are given to ſuch Uſe: And of the Truſt, what it is.

Part 5. And then they are to enquire what breach of Truſt, or Fraud hath been, by non-imployment, miſ-imployment, concealment, miſ-converting, or miſ-government therein. And how many ways this may be, is to be ſeen before in Sect 3.

The proceeding of the Commiſſioners, and their power. *Part 6.* As to the proceeding of the Commiſsioners themſelves, and their power in the execution of the Commiſsion, theſe things are to be known:

1. That it is not material, that the Commiſsioners which were preſent at the time the Evidence was given, and of the taking of the Inquiſition, be preſent at the making of the Decree; for if any, or all of them be abſent at the making of the Decree, which were preſent at the time of the taking of the Inquiſition and Evidence, the Decree is good, if it be made by four or more of the Commiſsioners.

And

And if it appear by the Return, that the names of four Commiſsioners were affixed to the Inquiſition, and four other Commiſsioners to the Decree, all is good, See for this, Chap. 6. Caſe 6.

2. That if Lands in London be given to maintain a Charitable Uſe in R. in the County of Warwick; and a Commiſsion be taken out in the County of Warwick, to enquire of this Gift: In this Caſe, theſe Commiſsioners of Warwick County, may not decree it. For the Inquiſition and Decree muſt be by Jurors and Commiſsioners of the County, where the Lands given to ſuch Uſes do lye. See for this, Chap. 6. Caſe 24. See in Part 8. of this Section. Power of a Jury to enquire of Lands in another County. Decree of Lands in another County.

3. The Commiſsioners are not to meddle with, or order any thing concerning the Colledges of Univerſities, &c. Others, ſee before, Part 4. For ſuch places as have ſpecial Viſitors, &c. See it there.

4. Nor are they to meddle with Purchaſors, &c. for valuable conſideration of Money or Land, without Fraud or Covin, that have no notice of the Charitable Uſe,

But the Commiſsioners are, by the words of the Statute of 39 Eliz. and 43 Eliz. after enquiry made, and upon examination and hearing of the matter, to ſet down ſuch Order, Judgment, and Decree, as the ſame Charitable Uſes may be truly obſerved in full, ample, and moſt liberal ſort, according to the true intent and meaning of the Founders and Donors thereof; which Order, Judgement, and Decree not being contrary or repugnant to the Orders, Statutes, or Decrees of the Donors or Founders, are by the words of the Statute of 39 Eliz. and 43 Eliz. to ſtand firm and good, and be executed according to the tenor thereof, until the ſame ſhall be undone or altered by the Lord Chancellor of England, or Lord Keeper of the Great Seal of England, or the Chancellor of the County Palatine of Lancaſter, reſpectively, within their ſeveral juriſdictions, upon the complaint of the party grieved to them.

And therefore for the further help and direction of Commiſsioners in this caſe, of the making of their Decree, they are to ſteer themſelves, and their proceed therein, by theſe following Rules and Caſes:

1. That where Money is kept back, and not paid; or paid where it ſhould not have been paid; the Commiſsioners may order the payment of it, and the arrearages to the Uſe limited by the Donor; and to be paid to the publick Officers of the Pariſh, if it be in Pariſh payment. And to continue the payment forwards, as they judge it moſt ſecure.

If given to Friends in Truſt, to pay ſo much yearly to ſuch a Uſe, and they keep it in their own hands, they may order the payment of it. Power of Commiſsioners to vacate a Leaſe, and order ſurrender of it.

2. That if a Leaſe or Conveyance be made by Parties truſted with a Charitable Uſe, to defraud and defeat the Uſe, the Commiſsioners may decree the ſame to be void; and thereupon

up on the ſame is void in intereſt and Eſtate. And if after, upon Appeal, the Supream Lord doe annul the Decree of the Commiſsioners, and make good the Leaſe; it is then received, and made good again in Intereſt and Eſtate. And if ſuch a Leaſe or Conveyance be aſsigned over to any, the Commiſsioners may decree the Aſsignment to be void, albeit the firſt Conveyance were made fraudulently, and in deceit of the Charitable Uſe. See Chap. 6. Caſe 2.

To make amends for hurt done to the Land, given to ſuch Uſes.

If Houſes given to Charitable Uſes, be ſuffered to be ruinous, and out of repair, by negligence; the Commiſsioners may decree; That thoſe that receive the Rents and Profits of them, ſhall repair them, albeit they have otherwiſe laid out the Rents in performance of the Charitable Uſe, and may order the Houſes to be ever after kept in good repair, as oft as need requires. And if they which ought to repair the Houſes, be dead before the Commiſsioners Decree, they may order the Heirs, Executors, or Adminiſtrators, having Aſsets in Law or Equity, to repair the ſame. See before, Chap. 6. Caſe 2.

Part 8. Power of the Commiſsioners.

3. That the Commiſsioners may not by their Decree, make a Corporation, not before incorporated, and enable them to take to Charitable Uſes, as a Corporation; as Churchwardens which are a Corporation in Law, but to ſpecial purpoſes. See for this Chap. 6. Caſe 2.

To make a Corporation.

But they may decree Lands held in Capite, or in Socage; to a Corporation already incorporate, to be Truſtees to perform a Charitable Uſe: And it ſhall be no Mortmain.

Power of Commiſsioners.

4. That they may decree Lands given to Charitable Uſes, to ſundry perſons and their heirs, to the ſaid Uſes, and enable them to demiſe the ſaid Lands for the beſt profit of the ſaid Charitable Uſe; and that when ſuch a number of them ſhall dye, the ſurvivors ſhall make a Conveyance to ſettle the ſame Lands in themſelves that ſurvive, and others to make up, and continue the number by them appointed. See for this, Chap 6. Caſe 2, 5.

To order the ſettlement of the Land charged.

Power of Commiſsioners to order within another County.

5. That where Lands which lye in the body of a County, be given to a Corporation, to maintain Charitable Uſes; the Commiſsioners of the County may make Orders to reform the breaches of Truſts, and miſ-imployment of ſuch Lands by the Corporation. See for this, Chap. 6. Caſe 2. See before, Chap. 7. Sect. 4. Part 6.

Power of Commiſsioners to order within another County.

6. That where a Rent is granted out of Lands in ſeveral Counties, for maintainance of a Charitable Uſe in one County; the Commiſsioners in that County where the Charitable Uſe is to be performed, may make a Decree, to charge the Lands in other Counties, to pay an equal contribution of charge in payment of the ſaid Rent. And there needs not Inquiſitions in the ſeveral Counties, for that the Rent is an entire Grant by the Deed or Will. See for this, Chap. 6. Caſe 3. *Eaſt Greenſted's* Caſe.

Inquiſition in divers Counties.

7. That

7. That if the Deviſees of a Rent-charge, or the Grantees thereof, to a charitable uſe, do purchaſe all, or part of the Lands, out of which the Rent is iſſuing: In this caſe, albeit in extremity of Law, the Rent-charge be extinguiſhed, yet if the Commiſſioners decree the Rent to be revived, and ſettle it upon others to maintain the charitable uſe, the Rent is revived by the Decree. See for this, chap. 6. caſe 3. *Eaſt Greenſted's* Caſe 8. The Caſe of the Inhabitants of *Woodford*. Rent extinct revive by a Decree.

8. That if a Rent-charge be granted out of Land to a charitable uſe, and the Land is afterwards ſold for a valuable conſideration of Money, or Land, to one that had no notice of the Rent; yet the Rent remaineth. For that the purchaſe was of another thing that was not given to the charitable uſe. See for this, chap. 6. caſe 3. *Eaſt Greenſted's* Caſe. 8. The Caſe of the Inhabitants of *Woodford*. Rent continue.

9. That albeit the Parties intereſſed are to have notice from the Commiſſioners of their time and place of ſitting; yet if they make their Decree without this, it is good. And if upon their Appeal, they make this an exception, that they had not notice, this ſhall not avoid the Decree, unleſs they ſhew withall in their Exception, that thereby they loſt the benefit of ſuch an Exception, or of ſuch a Challenge of a Juror, ſhewing the cauſe in certain. And then if the Lord Keeper ſhall adjudge the cauſe ſhewen, to be a ſufficient cauſe of Exception or Challenge; the Decree of the Commiſſioners may be annulled and reverſed without further examination. See for this chap. 2. caſe 3. *Eaſt Greenſted's* Caſe, and Caſe 4. of the Poor of *Walthamſtow*. Notice to the perſons intereſſed how to be given.

10. That the notice to be given to a Purchaſor of Lands given to charitable uſes, is to be certain, and a general Notice is not ſufficient. See for this, chap. 6. caſe 3. *Eaſt Greenſted's* Caſe Notice of the Uſe to a Purchaſor, what. *Part 9.*

11. That if a Purchaſor of Land given to charitable uſes, for conſideration of Money, hath Legal notice of the Uſe, and afterwards ſelleth the Land to another for Money, who hath no notice of the Uſe: This ſecond Purchaſor ſhall hold the Land chargeable with the charitable uſe. But if the firſt Purchaſor had no notice of the Uſe, then is the Land diſcharged of the charitable uſe. And if he afterwards ſell it to another for Money, that hath notice of the Uſe; yet he ſhall not hold it ſubject to the charitable uſe. See for this, chap. 6. caſe 3. *Eaſt Greenſted's* Caſe, and caſe 33. Notice of the Uſe to a Purchaſor.

12. That if a Rent-charge be granted to a charitable uſe out of Lands in ſeveral Counties: In this caſe the Commiſſioners are to charge this Rent, by their Decree, upon all the Lands in every County, according to an equal diſtribution, having regard to the yearly value of all the Lands chargeable with the Rent, and may not by their Decree, charge one or two Manors with all the Rent, and diſcharge the reſidue in other Counties or Places; for then their Decree will be contrary to How a Rent is to be charged by the Decree.

the Will of the Founders or Donors. See for this, Chap. 6. Caſe 3. *Eaſt Greenſted's* Caſe.

Notice to the perſons intereſted, how to be given.

13. That if one be authorized by a Party, ſubject to the Decree of the Commiſsioners for a Charitable Uſe, as a Counſellor, Solicitor, or Attorney, to ſollicite and defend his Suits and notice is given to him by the Commiſsioners, of the time and place of execution of the Commiſsion, againſt the perſon ſo entertaining him; adviſing him to acquaint the party intereſted therewith, and the notice is in time, that he may acquaint him, and no man cometh to make defence or challenge, and the Commiſsioners make a Decree, this is good, and the notice was ſufficient. And in the Caſe of S. it was proved, he was an aged man, not able to follow his own buſineſs, being in a remote County; but had a Son, a Counſellor at Law, who in other things attended his Fathers buſineſs; and the Commiſsioners gave him timely notice. And it was taken as a neglect of purpoſe to avoid the Commiſsion: Alſo it was proved, That the Father had perſonal notice of the time, and place appointed by the Commiſsioners, and the Son came to attend it, but took no exception to the Jurors: And the Lord Keeper ſaid, That the notice was ſufficient, although he had no notice of the enquiry.

Notice to Purchaſors.

14. That if Land given to a Charitable Uſe, be ſold for Money, to one that hath notice of the Uſe; this notice ſhall make the Land chargeable with the Uſe, in the hands of all other Purchaſors, although no notice be given thereof to them. But if the firſt Purchaſor have no notice of the Uſe, then is the Land diſcharged of the Uſe, and ſo ſhall be in the hands of all the ſucceeding Purchaſors. And no notice given to them afterwards will help it. See the Statute of 43 Eliz. Chap. 4. and Chap. 6. Caſe 6.

Rent continue.

15. If one have a Rent granted to him out of Land, to a Charitable Uſe, and he afterwards, having no notice of the Charitable Uſe, purchaſe the Land; by this it is ſaid, the Rent is not extinct, for that the Purchaſe is of another thing than was given to the Charitable Uſes. See for this, Chap. 6. Caſe 8. 15.

Notice to a Purchaſor.

16. Notice to a Purchaſor of a Charge upon the Land, to a Charitable Uſe, before a Conveyance is perfected, as after a Surrender before admittance of Copyhold Land, or between the Agreement and Sealing of the Writings, or before Attornment, Livery of Seiſin, Inrollment, and the like, where notice is requiſite, is timely enough. See for this, Chap. 6. Caſe 8.

17. If one give Lands or Goods, and, by his Will, appoints, That it ſhall be ſold to maintain a Charitable Uſe, and doth not appoint by whom the Sale ſhall be made; In this Caſe, the Commiſsioners may, by their Decree, appoint who ſhall ſell them, and order the ſale to be good; and that the Money thereof made, ſhall be imployed to the Charitable Uſe of the

Giver

Giver, according to his Will. And if exception be to it, the Lord Keeper will confirm it. See for this, Chap. 6. Case 22.

18. That if one devise Money to a Charitable Use, for the relief of the poor, and makes two Executors, and dyes, and they prove the Will, and joyntly intermeddle with the Receipt of the Money; and one of them doth trust the other with the Money, given to perform the Charitable Use, and to pay it accordingly, he wastes it, and dies insolvent, the surviving Executor shall be charged to pay the Money for the Charitable Use, if the Testator hath left Assets to pay it, for that they did joyntly intermeddle. But if the Executor that dyed, did only prove the Will, in the name of both Executors, and the surviving Executor never medled in the execution of the Will, but left all to the other, and he waste the Estate, and dye insolvent, the surviving Executor shall not be charged with the Charitable Use, out of his own Estate. See for this Chap. 6. Case 4.

Where the Commissioners may charge one for another.

Executors how chargeable.

19. That if Money be given to a Charitable Use by Will, and the Executors detain it in their hands many years, and not imploy it according to the Will, having Assets; the Commissioners may decree the Money, with damages, for detaining of it, to be imployed in the Charitable Use, according to their discretion, not exceeding 8 l. per Cent. for a year, for the Damages. See for this, Chap. 6. Case 4.

Commissioners give use for damage.

20. If Trustees under-lett the Land, and make a Lease good by Law, the Commissioners may make void the Lease, order the Surrender of it, and order the Settlement of the Land upon other Trustees. See for this, Chap 6. Case 5. 6, 7, 9.

For the improvement of the Land.

What the Commissioners may do therein. *Part* 11.

21. If a Lessee that hath a Lease at an under-value, make waste by cutting, and sale of Timber, the Commissioners may order them to give a recompence for it. See for this, Chap. 6. Case 4. But if he bestow the Timber in repair of the Houses, Contra.

To give recompence for waste on the Land.

22. The Commissioners may, by their Decree, enable persons as Trustees, to have interest in the Lands given to Charitable Uses, and to demise the same, according to the improved value. See for this, Chap. 6. Case 5, 6, 9.

To settle the Lands given to the *Charitable Use*.

To order Trustees to make Leases.

23. That if Lands of the value of 3 l. per ann. be given to maintain a Schoolmaster, and in the Deed it is expressed, that the said 3 l. only shall be imployed to maintain that Use, and no other use is expressed in the Deed, and afterwards the Land increaseth to a greater value; In this case, all the increased Rent shall be imployed for maintainance of that Charitable Use. See for this, Chap. 6. Case 6, 7. And if such Land so given, increase to a better value, if the increased value be not also paid to the Charitable Use; this is a breach of Trust, which the Commissioners may reform, if no other use of imployment of the Revenue, be expressed in the Donors Deed. See for this, Chap. 6. Case 6, 7, 9, 10. Cook 3. 130.

To order the increase to the same *Charitable Uses*.

24. If one set up an Alms-house for eight poor men, having Land worth 40 l. a year, Lett for years at 20 l. a year, and by

his Will, devile the Rents of that Land for the maintainance of the Poor in the Houſe, and his heir pays the 10 l. and at the end of the Term Letts the Land for 40 l. a year; the Commiſsioners may decree the whole, and what above the 10 l. a year, be received after the Leaſe ended. They may alſo decree the new Leaſe void, and to be ſurrendred. See the Caſe, Chap. 6. Caſe 9, 10.

Decree a Leaſe void to be ſurrendred

To give Damages, Coſts, or Intereſt.

If one give his Land, then worth 10 l. a year, to maintain a Preacher, Schoolmaſter, and poor people in Dale, and the Land after comes to be worth 100 l. a year, it muſt be all imployed to increaſe the ſeveral ſtipends, and none of it may be converted to private Uſe: And ſo the Commiſsioners may order it. And ſo the Lord Keeper will affirm it. See for this, Chap. 6. Caſe 10. Cook 8. 120.

25. The Commiſsioners may give Coſts to the party, who duly proſecute a Commiſsion, to reform a breach of Truſt in a Charitable Uſe, and the Lord Keeper may increaſe theſe Coſts, if the party grieved complain without cauſe. See for this, Chap. 6. Caſe 5. If Money be given to a Charitable Uſe, and be long detained as concealed, in the Executors, or in other mens hands; the Commiſsioners may decree the Money, with Intereſt for the time. See for this, Chap. 6. Caſe 19.

To order Truſtees and Viſitors, or to change them. *Part* 12.

26. If Land be given to a Corporation, or other particular perſon, to perform a Charitable Uſe, and the Donor appoint them Viſitors alſo of the Uſe, according to his intent; In this caſe, if the Viſitors do break the Truſt, either by detaining part of the Revenue, miſimploying, or any other ways defrauding the Charitable Uſe; this may be reſtored by the decree of the Commiſsioners, notwithſtanding the Clauſe before-mentioned in Sect. out of 43 Eliz. which diſables Commiſsioners to meddle with Lands given to Charitable Uſes, where ſpecial Viſitors are appointed. For the intent of the Statute, is only to diſable Commiſsioners to meddle with ſuch a Caſe, where the Land is given to perſons in Truſt, to perform a Charitable Uſe, and the Donor appoint ſpecial Viſitors, to ſee the Truſtees to perform the Uſe according to his intent. If in this caſe, the Truſtees defraud the Truſt, the Commiſsioners cannot meddle, but the Viſitors are to perform it. But where the Viſitors are Truſtees alſo, there the Commiſsioners may, by their Decree, reform the abuſe of the Charitable Uſe. See for this, Chap. 6. Caſe 6, 7.

Viſitors.

What perſons the Commiſsioners are not to meddle with.

27. If Land be given to a Corporation of 20 l. per ann. to maintain a Schoolmaſter, and the Donor appoint them Viſitors of the School-maſter and Scholars, according to his Orders, the Land came to 100 l. a year, and they give 20 l. a year onely to the School-maſter: upon this the Commiſsion iſſued out, and the Corporation upon Summons, refuſed to appear, ſuppoſing themſelves exempt by the Statute. This being certified, and moved to the Lord Keeper, he declared his opinion, that the Commiſsioners might proceed in their Commiſsion,

miſsion, and that the Viſitors being Truſtees, and parties breaking their Truſt, are not within the Proviſo of the Statute. See for this; Chap. 6. Caſe 7. *Supra* 169 : 172

28. That where the heir or others, charged to pay a Charitable Uſe, do break their Truſt; the Commiſsioners may transfer the Truſt to others, as to the Churchwardens, or others of the Parish, where the Charitable Uſe is to be diſtributed. See for this, Chap. 6. Caſe 15. To order the ſettlement of the Land given to Uſe.

29. That where the King erects a Free-School, and gives Land to it, and doth appoint four Knights, and the heirs Males of each of their Bodies, to be Governours of the Free-School and Lands, and that none but Knights ſhould be Governors thereof, and they do break the Truſt, by making Leaſes at low Fines, and ſmall Rents, &c. In this caſe, the Commiſsioners, upon this Statute, may not decree the Government and ordering thereof to others. For if they do ſo, the Lord Keeper will reverſe it, by reaſon of the Proviſo in the Statute. But he may order a Bill to be exhibited againſt the Viſitors and Governours, and upon proof of their breach of Truſt, take courſe for relief of the Charitable Uſe. See for this, Chap, 6. Caſe 39. To appoint other Truſtees, and remove the firſt.

30. If one give a Rent out of Land, to a Charitable Uſe and one of them to whom the Rent is paid, doth purchaſe the Land, ſo that it is extinct; yet by the Commiſsioners Decree, it will be revived. See for this, Chap. 6. Caſe 3. 8. For a Rent. To revive a Rent extinct. *Part* 13.

31. If a Rent be granted out of Land to a Charitable Uſe; this it ſeems is a charge, that ſhall go with the Land, in whoſe hands ſoever it comes, albeit it be not ſo by the ſtrict Rules of Law, and a Diſtreſs may be taken for it, upon the terre-tenant, for all Arrears, in whoſe time ſoever it was; and the party muſt have his remedy againſt them that had the Land, for the Arrears in their time, in Chancery. See for this, Chap. 6. Caſe 3. 8. For a Rent given to a *Charitable Uſe.*

32. That where a Rent-ſeck is granted of Land by Deed, to ſuch a Uſe, to begin after the Grantors death, and he gives Seiſin in his life-time, of the Rent, and there is a Nomine Pœnæ upon the heir, for the payment of it, and the Rent is Arrear: In this caſe the Commiſsioners may order a Purchaſor, that hath notice of the Uſe, to pay all the Arrears, both before, and in his time, and the Nomine Pœnæ, for the time the Purchaſer hath had it. See for this, Chap. 6. Caſe 15. For a Rent. Againſt Purchaſors. Notice to a Purchaſor.

33. That where Land or Rent is given to a Charitable Uſe, and miſ-imployed, a Purchaſor which hath before his Purchaſe notice of the Gift, is not further to be charged, than for his own time. But where the Rent is concealed, a Purchaſor ſhall anſwer for all the time of the concealment; for the Land is a debtor, Et tranſit cum onere. See for this, Chap. 6. Caſe 15. Againſt a Purchaſer.

34. That where a Rent is granted out of Land, to a Charitable Uſe, and one buys the Land for a valuable conſideration Notice.

What notice muſt be given to a Purchaſor.

tion of Money having no notice of the Charitable Uſe, and Rent, yet the Rent remains; for it is collateral to the Land; and another thing, and the notice required by the Statute, is to be given, as well of the Land, as of the Charitable Uſe. See for this, Chap. 6. Caſe 8, 15. 33.

What notice muſt be given to a Purchaſor.

35. Where Lands are given to a Charitable Uſe. If a Purchaſor buy theſe Lands, not having notice of the Charitable Uſe: it ſhall not bind him. But if a Rent be given out of Land to a Charitable Uſe, and a Purchaſor purchaſeth the Land for Money, not having notice of the Charitable Uſe, yet he ſhall pay the Rent, for he doth not purchaſe it, but the Land out of which the Rent doth iſſue, But he ſhall pay no more Arrearages of Rent, than what hath incurred in his time. But every Occupier and Owner, muſt anſwer the Arrearages of Rent for his own time. See for this, Chap. 6. Caſe 33.

To make a Decree upon Land in another County.

36. That Commiſsioners in one County, to a place in which a Charitable Uſe doth belong from Land lying in another County, cannot make a Decree to conclude parties: For the Decree muſt be by the Commiſsioners of the County, where the Lands given to ſuch Uſes do lye. See for this, Chap. 6. Caſe 24.

To make a Rent-ſeck a Rent-charge.

37. That the Commiſsioners may not by their Decree, make a Rent (that is but a Rent-ſeck) granted to a Charitable Uſe, a Rent-charge by adding a Clauſe of diſtreſs to it; for this alters the Rent in the creation, and is againſt the mind of the Donor. See for this, Chap. 6. Caſe 15.

Touching the Certificate of the Commiſſioners.

38. As to this part of the proceeding in the execution of this Commiſsion, theſe things are to be known:

1. That their Order and Decree ſo made by the ſaid Commiſsioners as aforeſaid, they are to certify the ſame into the Chancery. But herein theſe things are to be obſerved:

1. They are to certify the ſame into the ſame Court of the Chancery of England, or Chancery of the County Palatine of Lancaſter, whence the Commiſsion comes.

2. It ought to be certified in Parchment, not in Paper; and the ſame under the Hands and Seals of the Commiſsioners.

3. This muſt be done within the time limited by the Commiſsion. See for this, 43 Eliz. Chap. 4. Cook 2 Part, Inſtitut. 10, 11.

SECT. V.

The Remedy for the Party grieved, by the Order and Judgement of the Commiſſioners.

Part 14. If any be grieved with the Decree or Judgement of ſuch Commiſsioners for Charitable Uſes, ſo certified as before, he is to have his remedy in the Court into which it is ſent, and certified by way of Appeal, in this order: 1. He is to make

make his complaint to the Lord Chancellor, or Lord Keeper, or the Chancellor of the Dutchy, within whose Juriſdiction it is for his redreſs; and this he is to do by Bill. And thereupon they are alſo to put into the Court their Exceptions in Writing, againſt the Commiſsioners Judgement and Order. And on the other ſide againſt it, they are to put in their anſwers to the Exceptions. And thereupon the Court proceed to Examination, and to their final Decree upon it, and order it according to their diſcretion. See for this, 43 Eliz. Chap. 4. Cook 2. Part, Inſtit. 710, 711.

SECT. VI.

Touching the proceed of the Court, into which the Order is ſent, and certified; And the power thereof.

AND as touching the proceed of the Lord Chancellor, or Lord Keeper, or the Chancellor of the Dutchy, into whole Court the Certificate of ſuch Order, made by the Commiſsioners, ſhall be ſent and certified, this is to be known.

1. That they may, and ought each of them thereupon, within their reſpective Juriſdictions, to take ſuch order for the due execution of all, or any the ſaid Judgements, Decrees, and Orders ſo certified, as to either of them ſhall ſeem meet and convenient, according to Equity and Conſcience; and the true intent and meaning of the Donors and Founders.

2. That in caſe of complaint againſt the Decree or Judgement of the Commiſsioners, they do and muſt proceed to the Examination and Determination of the Cauſe.

3. That they may upon the hearing of the matter, if they ſee cauſe, adnull the whole Judgement: But this is rarely done, Diminiſh (in part,) or Enlarge; that is, Confirm the former Order, and enlarge the ſame by Addition of ſomething to it, as ſhall be thought to ſtand with Equity and good Conſcience.

4. That they may award good Coſts of Suit by their Diſcretion, againſt ſuch as ſhall complain againſt the Commiſsioners Order without good cauſe. But if the Order or Judgement of the Commiſsioners be adnulled, diminiſhed, or enlarged, no Coſts may be given to the party complaining. And if the complaint be for Coſts given by the Commiſsioners for breach of Truſt, and the Lord Keeper find the Complaint to be without cauſe, he may increaſe the Coſts. See for this, in Chap. 6. Caſe. 5.

5. That if upon an Appeal, the Lord Keeper alter, or confirm a Decree, made about Charitable Uſes, by the Commiſsioners, he muſt do it; he is to do it with this Limitation. ſo far as may ſtand with Equity and good Conſcience, according to the true intent of the Donor and Founder thereof.

6. But

No remedy againſt the final Decree of the Chancellors.

6. But if upon an Appeal in Chancery or Dutchy, the Decrée and Orders of the Commiſsioners be confirmed, the party grieved can have no remedy but in Parliament. For no Bill of Review doth lye after a Decrée is confirmed, upon a Bill of Review. See Chap. 6. Caſe 1. Windſor and Hilton. And yet it is ſaid, it is in the Lord Keepers power to make a Decrée good where it is defective. See for this, Chap. 6. Caſe 20.

See for all theſe things, 39 Eliz. Chap. 6. 43 Eliz. Chap. 4. 9. Cook 2. Part, Inſtitut. 710, 711.

Collections

Collections

Out of the Learned

READINGS

OF

Sr *FRANCIS MOORE*, Kt.

SERJEANT at LAW.

Upon the Statute of 43 *Eliz.* Entituled, *An Act to Redreſs Miſimployment of Lands, Goods, and Stocks of Money, heretofore given to* Charitable Uſes.

The Heads and Contents of the ſeveral Diviſions.

Diviſion 1.

1. WHat ſhall be ſaid to be a *Charitable Uſe* within the intent and meaning of this Statute.
2. What ſhall be ſaid to be a Gift, Limitation, Appointment, or Aſſignment of ſuch a *Charitable Uſe*.
3. What ſhall be ſaid to be Lands, Tenements, Rents, Annuities, Profits, Hereditaments, Goods, Chattels, Money, and Stocks of Money Aſſigned, or Aſſignable within this Statute.

Diviſion 2.

1. What Commiſſion ſhall be ſaid to be well awarded, according to this Statute:
2. What Commiſſion ſhall be ſaid to be well executed.
3. What perſons ſhall be Commiſſioners. } according to this
4. What perſons may be Jurors. } Statute.

Diviſion 3.

1. What ſhall be a ſufficient Inquiſition.
2. Who a party intereſſed that ought to be called to be preſent at the Inquiry.
3. Who a party intereſſed, that may have their Challenge.
4. What Challenge is allowable.

Diviſion 4.

1. What Decree, Order, and Judgement good, and warranted by this Statute.
2. How ſuch a Decree, *&c.* may be executed.
3. What

Diviſion 4.

3. What Decrees, *&c.* may be undone, or altered by the Lord Chancellor, and upon complaint, *&c.*
4. What adnullation, alteration, *&c.* of ſuch Decrees by the Lord Chancellor, ſhall be good and firme within this Statute.

Diviſion 5.

1. In what Caſes, Lands, *&c.* and Goods, *&c.* given to Colledges, *&c.* or Cathedral Churches, *&c.* are exempt out of this Act.
2. In what Caſes, Lands, *&c.* given to Cities or Towns Corporate are exempted.
3. In what Caſes, Lands, *&c.* given to Hoſpitals, or Free-Schools are exempted.

Diviſion 6.

1. What ſhall be ſaid a Purchaſe, or obtaining, upon valuable conſiderations of Money or Land, of any Eſtate or Intereſt of, into, or out of any Lands, *&c.* given to any Charitable Uſe within the Proviſo of this Statute,
2. What a valuable conſideration.
3. What ſhall be Fraud or Covin within this Act.
4. What notice ſufficient to charge a Purchaſor.

Diviſion 7.

1. What ſhall be ſaid a breaking of Truſt, or defrauding of Charitable Uſes, within this Act.
2. What Heir, Executor or Adminiſtrator ſhall be chargeable with recompence for breach of Truſt, or defrauding of Uſes, by his Anceſtors, Teſtators, or Inteſtat.
3. What ſhall be Aſſetts in Law or Equity, to make recompence according to this Act.

EXPO-

EXPOSITIONS.

I ſhall begin with the Words, and upon that Branch of this Statute, which relates to Gifts, Limitations, Aſſignments, and Appointments. And to Lands, Tenements, Rents, Annuities, Profits, Hereditaments, Goods, and Chattels, Money, and Stocks of Money, given, or aſſigned to Charitable Uſes, and in my Diſcourſe, conſider, *Upon the firſt Branch of the Statute.*

1. What ſhall be a Charitable Uſe within the intent, and meaning of this Statute.
2. What a Gift, Limitation, Appointment, or Aſſignment of ſuch a Charitable Uſe.
3. What ſhall be ſaid to be Lands, Tenements, Rents, Annuities, Profits, Hereditaments.
4. What Goods and Chattels, Money, and Stock of Money, Aſſigned, or Aſſignable, are within this Statute. *Four Points.*

And upon theſe Points declare my opinion, and I take it to be Law.

That no uſe ſhall be taken by Equity, to be a Charitable Uſe within the meaning of this Statute, &c. *fol.* 2. 3. 4. 5. 6. 7. *Reſolv.*

NO Uſe ſhall be taken by Equity to be a Charitable Uſe within the meaning of this Statute, if it be not within the Letter or Words of the Statute. But a Uſe may be conſtrued to be within the Statute by Equity taken upon the Letter of the Statute, and ſo within the words, Repair of Churches, Chappels may be taken by Equity, and under that word Church, all conbenient Ornaments, and Concurrents conbenient for the decent, and orderly Adminiſtration of Divine Service (as for the finding of a Pulpit or a Sermon-Bell, &c. may be comprehended. For Reparations of Churches are but preparations for the Adminiſtration of Divine Service. Nota. Equity. Church. Chappel. Finding of Ornaments. Pulpit. Sermon-Bell.

And as upon the words of the Statute, 5 Ed. 6. cap. 4. againſt fighting or ſtriking in Churches, or Churchyards, it hath been taken, That if any ſtrike another in a Church, Chappel, or Churchyard, he ſhall be Excommunicate, ipſo facto, by Equity of the ſaid Statute, upon the word Church and Churchyard. So upon the word Repair of Churches, may Chappels be taken by like Equity in this Statute.

But a Gift of Lands, &c. to maintain a Chaplain or Miniſter, to celebrate Divine Service, is neither within the Letter, nor meaning of this Statute; for it was of purpoſe A Gift to maintain a Chappel or Miniſter, to do Divine Service, is not within this Statute.

purpose omitted in the penning of the Act, lest the Gifts intended to be imployed, upon purposes grounded upon Charity, might, in change of times (contrary to the minds of the Givers) be confiscate into the Kings Treasury. For Religion being variable, according to the pleasure of succeeding Princes, that which at one time is held for Orthodox, may at another, be accounted Superstitious, and then such Lands are confiscate, as appears by the Statute of Chanterys, 1 E. 6. cap. 14.

Poor.
For relief of Aged, Impotent, and Poor.

Upon these words, For relief of Aged, Impotent, and Poor People; Poverty is the principal and essential Circumstance to bring the Gift within the compass of this Statute, for a Gift to the Aged of such a Parish, or to the Impotent of such a Parish, without expressing their Poverty, is not within the reach of this Act, because they may be rich.

Poverty is the Essential circumstance.

Gift to the Aged, without saying Poor, is not within this Act. So to the Impotent, without saying Poor, is not.

But a Gift to the Poor without expressing Age or Impotency, is good enough; for poverty, without further regard, is subject, sufficient for Charity to work upon.

So a Gift to all the Aged or Impotent of such a Parish, not assessed in the Subsidy, is good, for those which are not assessed in the Subsidy, are poor within the intent of this Statute.

Bastard.

So a Gift of Money to make a Stock to bind Apprentices, the Children of such Men as are not in the Subsidy of Goods, to relieve Bastards, is a Charitable Use, because they are like Orphans (having by intendment of Law) no Parents to relieve them.

To find Bows and Arrows for Children of poor Men.

To find Bows and Arrows for the Children of poor Men, in such a Parish, is good also, because it is an ease to their Fathers, which are poor, and yet are bound to find them.

Relief.
Meat, Drink, Apparel, for necessity, according to Law, not given to do an Act against Law.

(Relief) Under this word are comprized, Meat, Drink, and Apparel, wherein three things are considerable in the Gift, 1. That it be for necessity only, not for ornament or superfluity. 2. That it be according to the Laws, not against the Law. 3. That it be not given to do some act against the Law.

A Gift to build Houses for the Poor, with four Acres to a Cottage.

To make Conduits to such Alms-Houses, to maintain a common Landress for the Poor of such Houses. To maintain one to read Prayers to the Poor of such a House.

To build a House for the Poor to resort unto, to receive their Alms, Pensions, or Payments.

To provide them weapons for the defence of their Houses, not to wear abroad for ostentation.

To

To increase the Dyet of Alms-men upon Festival days.

But to make Seats for poor People to beg in by the high-ways, is no Charitable Use within this Law, for charity must concurr with the Law, and the Law prohibits begging, therefore it is no charity to maintain begging.

King Hen. 7. erected certain Alms-houses at Westminster, of a certain number of poor people, whereof one should be a Priest, who at certain times was to go about certain places, and pray for the Souls of the King and his Ancestors. Now although the Gift to the poor might seem Charitable, yet because it would not consist without a Priest to pray for Souls, which is Superstitious, it was decreed in the Chancery 27 Junii, ann. 30. R. Jac. That it was no Charitable Use within the Statute. Simon Peters Case.

A Fine was Levied by a Recusant to another in Queen Elizabeths time, and this was in Trust, That the Profits might be imployed upon an Hospital of Religious, which should be renewed, when the times would serve; and in the mean time, the Profits to be imployed to the relief of poor people, by the discretion of the Conusee and his heirs, according to the intent of the Conusor.

In this Case, because it was apparent, that the Donor was a Recusant, and the Imployment must be according to his intent, and his intent could be to no other then the relief of poor Recusants, which is not agreeable to the Law, therefore Term Hill. 3 Jac. The Land was decreed to the heir at the Common Law, because the Use was not Charitable within the meaning of this Statute-Law. Lady Egertons Case.

Soldiers. Voluntary or Presst, are within this Act. but not voluntary Victualers, nor the Wives, Children, or Servants of Soldiers.

(Soldiers) Under this word are contained every one, whether voluntary or Prest, that hath served in any band as a Common Soldier, or Captain; but no voluntary Victualers; nor the Wives, Children, or Servants of maimed Soldiers, because they cannot participate of their Wayme If an Alien be maimed in English Service, he is relievable by this Statute. But if an Englishman serve in the Wars of an Alien, he is not a Soldier within the meaning of this Act.

Mariners. All necessary Servants in a Ship. Victualers, Artificers, in the Kings Ships, or Ships of War, or Merchants Ships.

(Mariners.) By this word are understood all necessary servants in a Ship, as well as the Master or Pilate; so are Victualers, so are Artificers; and so are Mariners in Merchants ships, as well as in the Kings, or in ships of War, because the Merchants are imployed in service of the Realm; as well as Men of War; but neither the Owners, nor Passengers, nor Barge-men, nor Wherrymen, nor such as serve in the ships of Aliens, or such

ships

ſhips as go to Sea without Letters of Mart, are no Mariners within the intent of this Law.

Soldiers ſick, or maimed.

(Sick and Maimed.) Theſe words muſt be taken diſjunctively, and dividedly, ſo that (AND) muſt be conſtrued for (OR) For if the party be either Sick or Maimed, he is reliebeable: but if he be ſick, his relief muſt laſt no longer than the time of his ſickneſs, and the ſickneſs muſt be ſuch as ariſeth by reaſon of Service, as of Fluxes, Conſumptions, &c. A Maime is a hurt that diſables him for ſerving any more, as a Soldier or a Mariner.

If the Maim happened in lawful ſervice, the party is reliebable, and therefore if in Conductions, or in Camp, a Soldier be maimed by miſ-adventure, he is relievable, although he depart from Service without Licence, after the Maim taken, becauſe the Maim was lawful. But if one ſerve an Enemy, and be there maimed, although he be after pardoned, yet he is not to be relieved by this Law. So if his hand be cut off for an offence, though he were in an Engliſh Band, becauſe it was not in Service.

Schools of Learning. As of writing. Reading, or any Mathematical Science. Playing of Organs by Men, are within this Act.

[Schools of Learning.] Such are Schools of Writing, Reading of Languages, Muſick, or any Mathematical Sciences, Playing of Organs by Men, becauſe ſuch Muſick is uſed in Churches.

But not of Dancing or Fencing.

But no Schools of Dancing or Fencing, are within the intent of this Law, becauſe they are matters of Delicacy, not Neceſsity.

No Schools for Catechiſing, becauſe Religion is bariable, and not within this Statute.

Free-Schools. Grammar-Schools, and all Requiſites to it.

[Free-Schools.] Theſe are to be underſtood, Grammar-Schools, and all things requiſite thereunto, as Proviſion for the Room, for the School, the Maſter, and Uſher, and the Lodgings, &c.

Scholars in Univerſities of *Oxford* or *Cambridge*, and ſuch Students as ſtudy Divinity, Law, or Phyſick, not Popery.

[Scholars in Univerſities.] Theſe general words muſt be reſtrained to the particular Univerſities of Oxford and Cambridge; and to ſuch Students that ſtudy Divinity, Phyſick, or Law, not Students in Arts only, nor to any Students of Divinity in Popery, &c.

A Recuſant made a Feoffment of certain Lands to divers others, upon hope, that they would imploy the Profits of the Land to the uſe of poor Scholars in Oxford or Cambridge, or elſewhere, being ſuch as ſtudied Divinity, and took Holy Orders, according to the diſcretion of the Feoffees, and agreeable to the intent of the Feoffor, in this caſe, becauſe the party was a Recuſant, and his intent

intent by the words might appear to be, that the misimployment should be upon poor Popish Priests (for the words elsewhere in their meaning, is some foreign University, and the holy Orders they intend, are Popish.) Therefore, 16 Nov. 3 Jac. It was decreed, That the Heir should have the Land, because the Use and Imployment was not Charitable, but Superstitious, and not upon Scholars, within the meaning of this Law.

If a man give a stock of Money to be put out to young Tradesmen, at 5 l. per 100 l. the Interest-Money to be imployed upon young Students in Divinity, to provide them Living withal; this Use to the Students, is not a Charitable Use, because it depends upon Usury, and maintains Symony.

If a poor Scholar be married, or be placed in the College of Physitians, he is not to be relieved by this Statute, because it is presumed, he hath competent advancement.

[For repair of Bridges], Such only as are for publick passage, not private ease. Bridges for publick passage, not private ease.

[Ports and Havens.] Such onely as tend to safety of Ships of sail, not other Vessels; and Creeks for Harbor, which are imployed to find Lights to guide ships into the Haven, is a Charitable Use within these words, An Imposition granted upon Commodities Imported or Transported, to be imployed upon repair of Ports or Havens, where they shall Land, is a Charitable Use, and within this Statute, Ports and Havens, as tending to safety of Ships for Sails, not other Vessels, and Creeks for Harbor, to find Lights, to guide Ships into the Haven.

[Common Ponds] Or Watering places, are within the Equity of these words. Common Ponds, or Watering places.

[Sea-Banks.] only where the Sea Ebbs and Flows. And a Gift to repair Sea-Banks is good, notwithstanding others stand bound, by Covenant and Prescription, to repair them, because it is a common good, in preventing a common danger. vide *Rooks* Case, in fine *Cook* 5. 14. Sea-Banks.

[Orphans.] Are those that are Poor and Parentless, and such are Bastards after the death of their Mother, and are to be relieved, until by intendment they are able to get their living, which is the age of 21 years. Orphans. Bastards.

If a Parentless poor Child be married under 12 years of age, it continues an Orphan, until the age of Assent, no Servant or Apprentice is an Orphan within this Statute, because they have Masters, which are in lieu of Parents

Parents to provide for them; but a Scholar may be an Orphan untill 21 years of age.

Education and Preferment of Orphans, Lands given to buy Horses, and to provide a Rider, to teach Orphans, to ride, which hold by Knights service, is within this Law.

Houses of Correction. [Houses of Correction.] Cannot be Founded by Charter without an Act of Parliament, because it tends to Corporal punishment, which cannot be inflicted without Parliament; but Justices at their Sessions, may find one, by vertue of the Act of Parliament, made 39 Eliz.

A Gift of Money to erect a House of Correction, is good and within the meaning of this Law.

Marriage of poor Maids. [For Marriages of poor Maids.] These words extend not to such as have Parents able to give Portions with them, nor to such as have Legacies given them, nor to such as are incontinent, nor such as marry without, or against the consent of their Parents: But though they have Uncles, and able to give portions, yet they are poor within this Law. To provide them Wedding Apparel, or an Offering-Dinner, is a good Use; but not to provide them Wedding Rings, because that is the Husbands part.

Young Tradesmen. [Young Tradesmen.] Not after five years continuance in Trade.

Bankrupts, and persons decayed. [Persons decayed] Bankrupts are within these words, if they lye in Prison, not if they keep their Houses, because they have submitted themselves to the Law. And the Statute of Charitable Uses, was made after the Statute of Bankrupts.

Such as are decayed by negligence, of Fraud of Servants, or casualty of Fire, &c. are within this Law, but such as are decayed by Suretyship, are not relievable by this Act.

Usury. To lend to young Tradesmen under 10 l. the 100 l. is Charity, but to imploy the Interest, is not within this Statute, because no Charity can arise out of Usury, all Usury being unlawful.

Prisoners or Captives. For relief or redemption of Prisoners or Captives, to Prisoners upon Premunire, or upon Executions upon Condemnations, are relievable.

Semenaries. But Seminaries committed by the High Commissioners, are not, because the ground of their restraint, is a Contempt,

An enemy taken Captive by another Christian, not relievable. But if a Christian be Captive to a Turk, he is relievable,

reliebable, becauſe he was taken pꝛiſoner, in defence of a common Cauſe; Foꝛ the Turk is Hoſtis Communis to all Chriſtians.

A Gift was made to reliebe ſuch as were impꝛiſoned foꝛ their Conſcience ſake. It was agꝛæd in Throgmorton and Grayes Caſe, 41 Eliz. That if they were in pꝛiſon, in ſubjection to the Law, upon Condemnation, they were reliebable, if upon obſtinacy, not to be relieved by the Charity of this Law. P. for Conſcience.

The Wibes and Childꝛen of Pꝛiſoners, are not within the Equity of this Act.

Taxes, Subſidies, are not within the meaning of this woꝛd, becauſe poꝛ men pay them not, and ſæ no eaſe to diſcharge them of that Taxe. But all Taxes, where with the poꝛ as well as rich, are chargeable, are within the intent of this Law: as kæping of Matches, purſuing of Hue-and-Cries &c. But Fines foꝛ Eſcapes, foꝛ Robberies are not within this Act. Taxes.

Penalties of Statutes, non obſtantes, Monopolies, and ſuch kind of pꝛibiledges, cannot be granted to a Charitable Uſe. Penalties of Statutes

Upon the First Division.

Four neceſſary Incidents to a Cha. Uſe.

Ability of the Donor.
Capacity of the Donee.
The Inſtrument.
The thing given.

As in all other Grants, ſo in a Gift to a Charitable Uſe, theſe four things are principally conſiderable; 1. The Ability of the Donor. 2. The capacity of the Donee. 3. The inſtrument or means whereby it is given. 4. And laſtly, the thing it ſelf, which is or may be given, to a Charitable Uſe.

Perſons diſabled to be Donors.

Infants, Married Women, Ideots, Madmen, Lunaticks, Accomptants to the King, Bankrupts.

Thoſe perſons which are diſabled to be Donors by the Common Law, or by Statute, are diſabled to give to a Charitable Uſe, ſuch are Infants, Married Women, Ideots, Madmen, Lunaticks, Accomptants to the King, Bankrupts, &c.

An Infant may make a Feoffment to Cha. Uſe, with a Letter of Attorney to deliver Seiſin.
If he give Seiſin, or Levy a Fine, theſe are voydable.
If a Feme overt Levy a Fine to a Cha. Uſe, and ſurvive the Baron, it is good; if the Husband ſurvive, it is void.

If an Infant make a Feoffment to a Charitable Uſe, with a Letter of Attorney, to deliver Seiſin, this is utterly void; But if he Levy a Fine, or make Livery himſelf, theſe are but voidable, So,

If a Married Woman levy a Fine to a Charitable Uſe, this is good until it be reverſed; If the Husband and his Wife levy a Fine of the Wifes Land, and the wife onely declares the Uſe: If the Husband ſurvive, the Uſe is void: but if the Wife ſurvive, the Uſe is good.

A married Woman Executrix, may give the Goods of the Teſtator to a Cha. Uſe.

A married Woman, Executrix to another Man, may give the Goods which ſhe hath as Executrix, to a Charitable Uſe.

An Ideot, Madman, Lunatick, make a Gift to a Cha. Uſe, and good, till Office found.

If an Ideot, Madman, or Lunatick, make a Gift to a Charitable Uſe, it is good, until an Office be found of their Idiocy, &c.

A Bankrupts Gift to a Cha. Uſe, is good, till a Commiſſion of B. executed.
An Accomptant may do the like and good, till he be found inſufficient.

If a Bankrupt make a Gift to a Charitable Uſe, it is good, until a Commiſsion be awarded and executed. So, if an Accomptant make a Gift, it is good, until it appeareth, he is not ſufficient otherwiſe to make ſatisfaction.

May be Donees, Feoffees, &c.

Perſons diſabled to be Donors, may be Donees, or Feoffees to Charitable Uſe, and ſuch as cannot be Feoffees to other Uſes, may have Lands to a Charitable Uſe.

Feoffment to Dean and Chapter, to perform a Cha. Uſe, good.

If a Feoffment be made to a Dean and Chapter, upon condition to perform a Charitable Uſe, it is good, though they cannot be ſeiſed to another mans uſe.

Bankrupt, Accomptant, Recuſant, may be Feoffees to a Charitable Uſe.

A Bankrupt, an Accomptant, a Recuſant may be Feoffees, or Donees, to a Charitable Uſe.

Daughter and Heir gives Land, &c. and then a Son born, the Son ſhall avoid the Gift.

If the Daughter being Heir, gives the Land, diſcended to a Charitable Uſe, and then a Son be born, The Son ſhall avoid the Gift.

The Father Feoffee upon conditions, gives to a Charitable Uſe.

But if the Father had been a Feoffee, upon condition, that he or his Heirs ſhould give the Land to a Charitable

Uſe

Use, and the Daughter had made such a Feoffment before the birth of the Son, that should have bound the Son; because it was no more then the Son himself should have performed, by reason of the condition. Shall bind the Son.

A Gift was made to a Parson and his successors, to the use of the poor of the Parish: the Parson made a Lease for 30 years, The Lessee did not perform the Use, and the poor made an Entry; In this case it was resolved, That the Gift was good: and that the Lease for so many years was good also. Notwithstanding the Statute 13 Eliz. Cap. 10. And the Reasons, 1. Because it was not antient Glebe of the Church. 2. Because it could not tend to the impoverishment of the Successor; insomuch as it was given to a Charitable Use. Banisters Case in the Star-Chamber, 44 Eliz. A Gift to a Parson and his Successors, to the use of a Parish, good.

Lands are given to an Ideot for a Charitable Use, this is good, until an Office find him an Ideot; but after Office found, it shall be void, during his life; and then after his decease, it shall be revived in his heir. Lands given to an Ideot, good, till Ideocy be found.

A Gift made unto a married Woman, if her Husband disagree. The Gift is void. A Gift to a Married Woman, void, if her Husband disagree.

If Lands or Goods be devised to one by Will, or a Remainder limited to one by Deed, to perform a Charitable Use. If the Devisee will refuse the Legacy, or the Grantee wave his Remainder, and that by Fraud or Covin, they are compellable to take the Land, and to perform the Use. Devisee by Will, granted by Deed, compellable to perform the Cha. Use.

The King gives Land Probis hominibus de D. (which was no Corporation before) rendring a certain Rent, and the residue of the Profits, to repair a Bridge, &c. and after the King releases the Rent or Farm; in this Case, though the reservation of the Farm was the cause of their corporation and capacity, which being released, their capacity should seem determined; yet for the preservation of the Charitable Use, they shall continue a Corporation for that purpose only. Where a Corporation, which was none before, shall continue for a Cha. Use only.

A Gift to a Parish by Deed, to a Charitable Use, is void, but a Devise by Will is good; and the Churchwardens, and Overseers, shall take it in succession. And in London, the Mayor and the Commonalty. 40 Ass. 26. A Gift to a Parish by Deed, to a Cha. Use, is void. A Devise by Will, good.

A Charitable Use cannot be limited upon an Estate in Dower, nor upon a Gift in frank Marriage; nor upon exchange made of Lands. A Cha. Use cannot be limited, upon an Estate in Dower. Nor upon a Gift in frank Marriage, nor upon exchanged Land.

But a Joynture may be made to a Charitable Use, because it may be upon condition; Vernons Case, Coke. 4. 2. And wheresoever a Condition is limitable, there a Charitable Use is appointable. But it may be charged upon a Joynture.

It may be limited upon a Gift in Tail, by a Render by Fine, upon a Gift, Causa Matramonii prælocuti, upon a Release of Right, Action, Entry, &c. or any thing Gift in Tail, by render by Fine, upon a Gift, *causa Matrimonii prælocuti*. Release of right of Action, Entry, &c. or any thing valuable.

Upon bargain and sale, it may be averr'd
Upon a Feoffment without Liver.
Upon a Reversion without Attornment.
Upon a bargain and sale, without Inrollment.

thing valuable upon a bargain and sale of Land, it may be averred, that it was to a Charitable Use upon a Feoffment, without Livery, upon a Grant of a Reversion, without Attornment, upon a Bargain and Sale without Inrollment.

Wheresoever a condition is limitable, there a Cha. Use is appointable.
Coppyholder surrenders to the use of a Grammar-School.
The Lord is compellable to admit the Tenant.
If Surrender had been to a Corporation, the Law is otherwise.

If a Coppyholder surrenders to another, to the use of a Grammar-School, the Lord of the Mannor is compellable to admit the Tenant, because it is not prejudicial to the Lord; insomuch, as he hath but one Tenant, after whose death, his Fine is due, as it was before, and the use of the Land is only in the Corporation. Ranshaw & Robottom's Case at St. Albans, Dower in the Chancery, 43 Eliz. Otherwise, if the Surrender had been made to a Corporation; for then the Lord should have been prejudiced in his services; so if the custom of the Mannor be to devise to one only, and to have a Harriot after his death, the Tenant may not surrender to two persons to a Charitable Use, because the Lord is delayed of his Harriot.

Coppyholder surrenders to the use of his Will.
Deviseth Land to be sold for a Cha. Use.
The Heir compelled to surrender accordingly.

A Coppyholder surrenders to the use of his last Will, and thereby devises, that the Parson, the Churchwardens, and four honest Men of the Parish of Alhallows, should sell his Coppyhold, to be imployed to a Charitable Use. The Coppyholder dyeth, his Heir is admitted, the Parson, &c. sell the Coppyhold to J. S. the Heir was compelled to surrender to J. S T. H. Guiddys Case detrac'd, 4 Jac. in the Chancery.

A Lease rendring Rent to a common Midwife, for poor Women, good.

A Lease for years is made, rendring Rent to a common Midwife, for poor Women: the Rent is limited, by reason of the Charity, though a reservation of Rent cannot be appointed to a stranger, by the Common Law.

Two joynt Tenants one releaseth to a Cha. Use, the Use is well limited.

If there be two Joynt-Tenants, and one release to the other; to a Charitable Use, the Use is well raised; but if two Joyn-Tenants of a Rent, and one grants his part to the other to a Charitable Use, that is void, for one Joynt-Tenant cannot grant to the other.

But a Grant from one to his Fellow, is void.
Land sold to a Cha. Use, after a Feoffment, with power of Revocation, the use is well raised.

If a man make a Feoffment, with a power of Revocation, and afterwards he sells the Land to a Charitable Use, the Use is well limited, and he cannot revoke. If a man devise a term for years, to a Woman, during her life, the remainder to another to a Charitable Use, though the remainder which is limited, be void, yet the Executors of the Woman, which shall have the residue of the term, shall be charged with the Use.

Residue of a term charged with a Charitable Use.

Three Parishes. Money given to be Lett out by the Churchwardens at interest. Relievable in Chancery, but not by this Statute.

If a man bequeath 300 l. to three Parishes, equally to be Lett out, at 5 l. per 100. by the Churchwardens of each Parish, this Legacy is not within this Statute; but yet the Chancellors may give remedy by Equity in the Chancery.

If

If Money be given to be put out at 5 l. per Cent. and the Interest to be given amongst the Poor, this is no Charitable Use within this Statute, because it depends upon Usury, which is unlawful.

Interest of Money given to a Cha. Use, not Charity, because grounded upon Usury, which in it self is unlawful.

If a man devise that the Executors or Administrators of his wife, shall pay 100 l. to be Lett out to young Tradesmen, this Devise is void, because he cannot charge the Executors or Administrators of his wife. But if that Wife take another Husband, and he hath Assetts in his hands, of the Goods of the former Husband, those shall be lyable to the Charitable Use; and these observations he made upon a Decree, in Jo. Haward's Case, Ann. 40 Eliz.

A Devise to charge the Executors, &c. of a Feme-Covert, with a Charity, is void. If that Feme take another Husband, & he have Assetts of the first Testator, it is good, as to the Assetts.

G. gave Lands to the Poor of the Hospital of Reading, 44 Eliz. now the Hospital was no Corporation, and so not capable; but the Mayor and Burgesses were Governors, and Supervisors of the Hospital, the Land upon Equity, decreed to the Mayor and Burgesses, to the use of the poor to that Hospital.

A Charity given to the poor of an Hospital, being no Corporation, decreed to the Mayor and Burgesses, in whose Precincts the Hospital was, to the use of the poor of that Hospital.

Where the things given may pass without Deed, there a Charitable Use may be averred by witnesses; but where the things cannot pass without a Deed, there Charitable Uses cannot be averred, without a Deed, proving the Use.

A Charity may be averred, where it passeth without Deed.

Where they pass by Deed, *e contra*.

If a Fine be Levied, Sur-Grant & Render, a Charitable Use, cannot be averred without a Deed: but if a Fine be levied, and a Use expressed in another Deed, That expressed Use may be averred without Deed, to be a Charitable Use, and upon confidence; so may an Averment be taken by parol of a Charitable Use, which is agreeable to the Use expressed.

A Charity cannot be averr'd against a Fine, Surrender, Grant, and Render.

If the use pass by another Deed, & upon Confidence, &c. an averment is good by parol.

A Joynture made, to bar a Woman of her Dower, cannot be without Deed; and therefore a Charitable Use, limited upon such a Joynture, cannot be averred without a Deed.

A Charitable Use upon a Deed, to bar a woman of her Dower, cannot be averr'd.

If a man make a Feoffment, upon condition, that the Feoffees shall perform a Charitable Use; if the Feoffor himself re-enter for the Condition broke, the Use is destroyed: but if his Heir enter for breach of the Condition, he shall perform the Use, because he comes in upon Confidence, and the Condition was compulsory to perform the Use.

Upon the re-entry of a Feoffor of a Charity, after Condition broken, the use is destroyed.

But if his Heir enter *ut supra*, he is bound to perform the Use.

A man being seized of two Acres of Land, the one of the nature of Burrow-English, the other at the Common Law, hath two Sons, and deviseth both those Acres to both his Sons, to perform a Charitable Use. If the Condition be broken, the elder Son shall enter into the Burrow-English, and the younger into the Guildable Acre, and each shall hold his Acre, charged with the Use, because the condition was penal and compulsory, to perform a Charitable Use.

A Devise to two Sons of two Acres, for a Cha. Use, one *Burrough-English*, the other at Common Law, both are chargeable with the Cha. Use.

There

5 things not chargeable with a Cha. Uſe.
1. Things of no profit
2. Things incident to others, and unſeparable.
3. Poſſibilities.
4. Conditions.
5. Copyholds, if prejudicial to the Lord.

There be five manner of things which cannot be granted to a Charitable Uſe, Firſt, things that yield no profit. 2. Things that are incident to others and unſeparable. 3. Poſsibilities of Intereſt. 4. Conditions. 5. Copyholds, if any way prejudicial to the Lords.

Advowſon in groſs.
A Way, Matters of Pleaſure, as Licenſe to hunt in a Park. A Stigniory *pro* Fealty only, *&c.* cannot be granted to a Cha. Uſe, but may be releaſed or ſold, and the Money raiſed, diſpoſed of accordingly.

An Advowſon in groſs, a way, or paſſage, matters of pleaſure, as Licenſe to hunt in a Park, A Signory pro Fealty only, &c., cannot be granted to a Charitable Uſe: but they may be releaſed to a Charitable Uſe, or ſold, and the Money prodenient, diſpoſed to a Charitable Uſe.

An Advowſon granted upon condition, when the Church is void to a Cha. Uſe. is a good limitation.

So an Advowſon may be granted, upon condition; that ſo often as the Church ſhall be void, a poor Scholar of ſuch a College ſhall be preferred, and the limitation is good.

Common Appendment, and Annuity, *pro conſtito*, cannot be granted.

A common Appendant, an Annuity pro conſitio impendendo, and ſuch things not ſeparable, cannot be granted to a Charitable Uſe.

Entry upon condition broken, to perform a Cha. Uſe, the Grantee is chargeable.

If a man make a Leaſe for life, upon condition, and after grants his Reverſion, upon condition to perform a Charitable Uſe, if the Grantee enter for Conditions broken, he ſhall preſently hold as charged with the Uſe.

A Condition in groſs may be releaſed to a Charitable Uſe, but it cannot be granted.

The Heir not chargeable with a Cha Uſe, after a Mortgage charged therewith.

If one Mortgage or Deviſe, that if his Heirs redeem the Land, he ſhall perform a Charitable Uſe, the Heir is not chargeable, for his Father had but a bare Condition; and yet if the Mortgager Deviſe, that his Executors ſhall pay the Money to redeem the Lands or if he deviſe Money to his Heir, to redeem the Land, and deviſe farther, That when the Heir hath redeemed the Land, he ſhall perform a Charitable Uſe, this Leaſe is well limited, and the Heir is chargeable with it.

But if the Heir redeem the Land, it is chargeable.

The Statute of Wills binds not this Statute.
Two parts deviſed to pay debts, a third to a Cha. Uſe, the Heir charged with the Uſe by deſcent.

The Statute of Wills, binds not this Statute; for if Tenant by Knight-ſervice diſpoſe of two parts of his Lands, for the advancement of his Wife and Children, &c. and after deviſe by his Will, That his Heir ſhall perform a Charitable Uſe with the third part; the Heir ſhall be charged with the Uſe, becauſe he is in by diſcent.

Heir by Covin denies tender of Money, given to a Cha. Uſe, upon ſale of Land, decreed the Land charged therewith to be ſold, and debts paid.

The Mortgager deviſes, that his Executors ſhall pay the Money to the Mortgagee, and that then they ſhall ſell the Land, to pay his debts; the Executors tender the Money at the day, the Heir by Covin denies, that they ſhall tender in his name. It was decreed 42 Eliz. in Chancery, that the Mortgagee ſhould receive the Money, and that the Executors ſhould ſell the Lands, and pay the debts. Wormeſton & Price's Caſe. The like reaſon of a performance of a Charitable Uſe, which is equally, if not more favoured in Equity than payment of debts.

If a man appoint by his Will, that his Executors prosecute an Action of Debt, Detinue, Covenant, &c. and that all which they recovered in such an Action, shall be imployed to a Charitable Use. This Use is well limited, upon such a possibility &c.

All that shall be recovered upon an Action of Debt, &c. given to a Cha. Use, the Use is well limited.

If one have a term for years to a Charitable Use, and it is evicted, all the damage which the termer shall recover, upon an Action of Covenant, shall be imployed to the Charitable Use.

Damage recovered by a Termer, in an Action of Covenant upon an Ejectment given to a Cha. Use, is a good limitation.

The same Law, of Land recovered in value for it, shall be lyable to the Charitable Use; so shall a Tenancy, which escheats to a Seniory, that was granted to perform a Charitable Use.

The same Law, of Land, recovered in value.

So of a Tenancy, if it Escheat, &c.

Upon

Upon the Second Diviſion.

Upon the Second Branch.

That it ſhall and may be lawful, to, and for the Lord Chancellor or Keeper of the Great Seal of *England* for the time being. And for the Chancellor of the *Dutchy* of *Lancaſter*, for the time being, for Lands within that County *Palatine*, to award Commiſſions under the Great Seal of *England*, or the Seal of the County *Palatine*, as the caſe ſhall require, to the Biſhop of every ſeveral Dioceſs, and his Chancellor, in caſe there ſhall be any Biſhop, at the time of the awarding the Commiſſion, and to other perſons of good and ſound behaviour: *Provided*, That no perſon or perſons, that hath, or ſhall have any of the ſaid Lands, Tenements, Rents, Annuities, Profits, Hereditaments, Goods, Chattels, Money, or ſtocks of Money in his hands or poſſeſſion; or doth, or ſhall pretend Title thereunto, ſhall be named a Commiſſioner or Juror, for any the Cauſes aforeſaid or being named, ſhall execute or ſerve in the ſame.

And upon this Branch, and the Proviſo, I ſhall obſerve,

4 Points.

1. What Commiſſion ſhall be ſaid to be well awarded.
2. What Commiſſion ſhall be ſaid to be well executed.
3. What perſons ſhall be Commiſſioners.
4. What perſons may be Jurors: And I conceive,

Reſolve.

The King may name the Commiſſioners, &c. *ut in fol.* 7, 8.

The King may name Commiſſioners, and ſeal their Commiſſion himſelf.

THe King may name the Commiſsioners, and ſeal the Commiſsion himſelf, notwithſtanding the words of the Statute; That the Lord Chancellor, &c. ſhall award Commiſsions, &c. but Commiſsioners, which have the cuſtody of the Great Seal, during the vacancy of the Chancelloꝛſhip, cannot award a Commiſsion by vertue of this Act.

Commiſſions in the vacancy of a Chancellor, cannot.

A Commiſsion awarded under the Privy Seal, gives no authority to proceed according to this Statute. But if the King Command the Chancellor to award a Commiſsion, under the Great Seal, this Commiſsion ſhall be ſaid to be awarded by the Chancellor, though the King gave direction.

A Commiſsion under the Privy Seal, gives no authority.

If the King command a Commiſſion, this ſhall be ſaid to be awarded by the Chancellor.

For Lands within the County Palatine; under the word (*Lands*,) in the County Palatine, are comprehended Commons, Rents, Apprender, &c.

Under the word (*Lands*,) in the County Palatine, are comprehended Commons, Rents, Apprender, &c.

Goods within the County Palatine, and to be imployed in ſome place out of the Dutchy.

But

But for Goods given to Charitable Uſe, within the Dutchy. If the Lands given to Cha. Uſes, lye within the Dutchy, and the imployment be appointed in ſome place, out of the Dutchy; or if the Lands lye without, and the imployment is limited within the Dutchy, in theſe caſes, either ſeveral Commiſsions may be awarded by the ſeveral Chancellors, or one Commiſsion under both Seals, may be ſufficient. But if Rent be given out of Land in one County, and a Clauſe for Diſtreſs limited in another County, there the Commiſsion muſt be to that County where the Land lies, out of which the Rent is granted.

Or if Lands given, lye without, and the Uſe within. Several Commiſſions by ſeveral Chancellors, under both Seals, muſt be awarded.

If Rent be given out of Land in one County, with a clauſe of Diſtreſs in another, Commiſſion muſt be to the County, where the Land is charged.

Where the Counties may joyn, there one Commiſsion is ſufficient; but always there muſt be ſeveral Inquiſitions in each County.

If two Counties joyn, one Commiſſion is ſufficient, but always ſeveral Inquiſitions in each County.

To the Biſhop and his Chancellor. A Biſhop elect, is no Biſhop within this Act. But if he be conſecrate before the Teſte of the Commiſsion awarded, it is ſufficient; though it were the ſame day.

A Biſhop elect, is no Biſhop within this Act.

If Conſecrate before the Teſte of Commiſ. it is ſufficient, though it be the ſame day

A Biſhop Suffragan, although he hath Epiſcopal Juriſdiction, yet he is no ſuch Biſhop to be named in a Commiſsion, upon this Statute. A Commiſsion is awarded to a Biſhop, and his Chancellor, whom the Biſhop names after the award; this Chancellor, cannot intermeddle in the execution of the Commiſsion; for he was not Chancellor at the time of the awarding the Commiſsion.

A Biſhop Suffragan not within this Act.

A Biſhops Chancellor, named after the Award, cannot meddle.

Though a Biſhop be notoriouſly criminous, yet unleſs he be depoſed, he ought to be named in the Commiſsion. But if a Biſhop be a party intereſted, he may be omitted upon ſpecial mention of the Cauſe, and ſo the Commiſsion may be good, notwithſtanding the omiſſion of the Biſhop.

A Biſhop notoriouſly Criminal, may be named, unleſs depoſed.

If a party, he ought to be omitted, upon mention of the ſpecial matter

And ſo the Commiſſion good, though the Biſhop be omitted.

Perſons of good and ſound behaviour. An Alien of amity may be a Commiſsioner; ſo may a perſon that is Fined, or Ryots; or petty-miſdemeanor; but one that was Fined, for acquitting a Felon againſt the Evidence given, when he was a Juror, may not be a Commiſsioner; for one that was Fined for Fraud, or Couſenage, or a Barritor, and all perſons convict, cannot be of the Commiſsion.

An Alien. A perſon Fined for Ryots, &c. may.

But a Juror Fined for Acquitting a Felon againſt Evidence, or one Fined for Fraud and Couſenage, nor a Barritor nor any perſons convict, may not be of the Commiſſion.

No perſon that doth, or may pretend Title, ſhall be named a Commiſſioner, or Juror: This proviſo being made to corroborate a beneficial Law ſhall be taken largely: ſo that whoſoever may have any finger in the Intereſt, or Titles, ſhall be excluded, from either being a Commiſsioner or Juror. And therefore if a man deviſe Land to be ſold for a Charitable Uſe, and names no perſon to ſell it; In this caſe, the Biſhop ought to make the ſale, but he can be no Commiſsioner.

No perſon pretending Title, may be either Commiſſioner or Juror.

Land deviſed to be ſold for a Cha. Uſe, and none named to ſell it, the Biſhop muſt make the ſale, but muſt be no Commiſſioner.

So it is with one that defrauds a Truſt to a Cha. Uſe, and dies inteſtate.

So if Goods be given to one in Truſt, to a Cha. Uſe, and he defrauds the Uſe, and dies inteſtate; becauſe the Goods are preſently in the hands of the Biſhop, until Adminiſtration be committed, he cannot be named a Commiſsioner, for the pretence of Title he hath to the Goods, unleſs the defrauders dyed in a peculiar Pariſh in the Diocels, exempt from the Juriſdiction of that Biſhop.

Unleſs he dies where *bona Notabilia*, are not to be found within the Biſhops Diocels.

All Commiſſions are to be awarded to 5 at the leaſt.

Leſs than four cannot execute a Commiſſion.

The Commiſsion ought to be awarded to five at the leaſt, becauſe the words of the Statute are, or any four of them, and leſs then four cannot execute a Commiſsion.

All Commiſſions muſt be framed in the words of the Act.

This Statute limits the form.

Inquiſition muſt be joynt of Gifts and Abuſes, and not of either ſingly.

The Commiſsion muſt be framed in the very words of the Act, becauſe the Statute limits the form; and the Inquiſition muſt be according to the Commiſsion, jointly of the Gifts, and Abuſes, not of either of them alone.

One Inquiſition without any Indictment, good.

And whereas it hath been doubted heretofore, whether it were not requiſite to have two Inquiſitions; the firſt, as an Indiament to accuſe the parties, the other before the parties being preſent, the Reader reſolved, That one Inquiſition is ſufficient, whereunto the parties intereſted muſt be called.

A Commiſsion awarded to an Infant, who comes to age before Execution, he may not proceed; for the party ought to be able, at the time of the awarding of the Commiſsion. But if one that is Outlawed, be named a Commiſsioner, and he reverſe the Outlawry before Execution, he may proceed, for now upon the matter he was never Outlawed, becauſe an erroneous Outlawry, is in truth no Outlawry; but if he purchaſe a Pardon of his Outlawry, yet he remains diſabled, becauſe the Pardon affirms an offence. So if the Commiſsioner were excommunicate at the time of Award, and be afterward abſolved; yet he continues ſtill diſabled to be a Commiſsioner.

A Commiſsion to an Infant, not good.

An Outlawed perſon after Reverſal, may be named.

If he purchaſe a Pardon, he is diſabled.

An erroneous Outlawry is no Outlawry.

An Excommunicate perſon is diſabled, though abſolved afterwards.

If a Commiſson be awarded to one that is cited for Simony, and after the Commiſsion he is ſentenced, and thereupon excommunicate; he is a perſon diſabled to be a Commiſsioner, ab initio. But if he had been only cited, and no further proceedings againſt him, he might have executed the Commiſsion. So may a man that is indicted of a Crime; but if after the Commiſsion awarded, he be attainted, though he purchaſe a Pardon, yet he is ſtill a party diſabled to be any Commiſsioner upon this Statute, and may not execute that Commiſsion.

One cited and ſentenced for Symony, is diſabled *ab initio*.

But if only cited, the Law is otherwiſe.

One attaint and pardoned, is diſabled.

Tenant by ſufferance. A Tutor are not excluded, but an Executor is diſabled from being either a Commiſſioner or Juror.

Neither Tenant by Sufferance, nor a Tutor, are perſons excluded, by reaſon of Intereſt or Titles; but an Executor is diſabled to be either Juror or Commiſsioner, by reaſon of his pretended Right.

If

If the Goods be given to a general Corporation, as the City of London, yet Freemen of London may be of the Jury. But if the Gift were to an inferior Corporation, as to a company, as of the Mercers, &c. no Member of that Company or Corporation, may be a Commiſsioner or a Juror.

Goods given to a Corporation generally, as to the City of *London*; yet Freemen of *London* may be of the Jury
If to a Company, no Member thereof, may be either Commiſsioner or Juror.

Lands were given in Tail, in form of a perpetuity, the Donee ſuffers a Recovery to a Charitable Uſe; he that was in the Remainder, cannot be a Commiſsioner, nor a Juror, becauſe he hath a pretended right, by reaſon of the perpetuity: and ſo reſolved in Sir William Udalls Caſe, Mich. 3. Jac.

Donee ſuffers a Recovery to a Cha. Uſe, the Remainder cannot be either Commiſsioner or Juror.

If a Commiſsion be executed by five, and four of the Commiſsioners be without exception, it is well executed, though the fifth were a party intereſted, &c.

If a Commiſsion, 4 of 5 be without exception, the Commiſsion is good.

No Commiſsion ought to be awarded without a pretedent negligence, or miſimployment ſuppoſed.

No Commiſsion to iſſue, without a ſuppoſed negligence precedent.

The Chancellor may join ſeveral Counties in one Commiſsion, or the County, and a Franchiſe in the ſame County together: For the words of the Statute are large, It ſhall be lawful for the Chancellor to award a Commiſsion into all, or any part or parts of this Realm.

Several Counties may be inſerted into one Commiſsion, and ſo one County and Franchiſe.

Upon the Third Diviſion.

Inquiſitions, where to be taken, &c.

Upon the third Branch.

That it ſhall and may be lawful for the Commiſsioners, or any four or more of them, calling the parties intereſſed in any Lands, &c. given to Charitable Uſes, to enquire by the Oaths of 12 men or more of the ſaid County, and by all other good and lawful ways and means, whereunto the perſons intereſſed, ſhall and may have their lawful challenge and challenges. I ſhall offer to your conſideration,

Four Points.

1. What ſhall be a ſufficient Inquiſition.
2. Who a party intereſſed, that ought to be called to be preſent at the Inquiry.
3. Who a party intereſſed that may have their challenge.
4. What challenge is allowable, and it is my opinion, and I conceive it Law.

Reſolve. That the Inquiſition ought to be taken in that County, where the Commiſſioners are appointed, *&c.* & in *fol.* 9, 10.

Inquiſitions. Inquiſition muſt be taken in the County where the Commiſſioners are appointed.

The Inquiſition muſt be taken in that County, where the Commiſsioners are appointed.

Land in ſeveral Counties, may be inquired in its proper County.

If Land lying in ſeveral Counties, be given to a Charitable Uſe, and a Commiſsion is awarded only into one County, they may inquire for the Land in that County, and the Inquiſition is good for that Land; but they cannot inquire for that Land in the other County, by vertue of that Commiſsion, becauſe Land is a thing local, and tyed to a certain place; yet if another Commiſsion be directed to the ſame perſons in the other County, where that other Land lyeth, they may take an Inquiſition of that alſo; and ſo upon thoſe ſeveral Inquiſitions in divers Counties, taken, by vertue of ſuch ſeveral Commiſsions (they being the ſame perſons) may make one Decree for both, and it ſhall be good.

Land is local.

Several Commiſſions muſt iſſue for Lands into ſeveral Counties, and ſeveral Inquiſitions.

The ſame Commiſſioners may decree Land in ſeveral Counties.

Rent out of Land in ſeveral Counties, may be decreed by one Commiſſion.

If a Rent iſſuing out of Lands, lying in ſeveral Counties, be given to a Charitable Uſe; there ſhall be awarded but one Commiſsion, but the Commiſsioners muſt make ſeveral Precepts, and take ſeveral Inquiſitions in each County, and yet make but one Decree for all, the Commiſsions muſt be awarded where the Land is.

Several Precepts, and ſeveral Inquiſitions.

Where the Land lies, Commiſſion muſt iſſue.

If the Land given to a Charitable Uſe, lye in one County, and the imployment be limited in another; if a Commiſsion be awarded into the County where the Land lies, it is ſufficient. But yet it were more Apt and Expedi-

ent

ent to have it awarded in both Counties.

Land given in one County, & imployment in another, Commiſſion is good, if iſſued where the Land lies.

If Goods be given to a Charitable Uſe, the Commiſsion muſt always be awarded to that County, where the imployment is limited.

If Goods be given. Commiſſion where the imploy ment is.

The Commiſsioners for their inquiry are bound to the County, but not for their Decree, for that may be made in another.

Inquiſition muſt be in the proper County Commiſſioners are not bound to place for their Decree.

The Inquiſition muſt be made, both of the Gift, and the abuſe, &c. not of one alone, for then it is imperfect and void.

Inquiſition muſt be of the gift and abuſe. Subſtance of either, is ſufficient to a Jury.

If a Jury find the ſubſtance of the Gift, or abuſe, &c. it is ſufficient though they vary in ſome particulars, or find not the circumſtances. And therefore,

General Uſe.

If they find a Gift made per quendam ignotum, or quibuſdam ignotis, it is good enough, for they have found a Gift, which is the ſubſtance; ſo if the Gift were made by Fine, and they find it was by Feoffment, or if it were by Feoffment to Uſes, and they find it was given by Will, this is good enough, for the Gift is the ſubſtance, and the form of conveyance, but a circumſtance.

A Gift per *Ignotum*, good.

The Gift is the Subſtance.

General Uſe.

If Jurors find the general Uſe good, particulars ſhall not hurt.

So if they find the general Uſe truly, though they miſs in the particular, this is ſufficient. And therefore,

If they find a Gift to provide Books for poor Scholars, and the Gift was to buy them Gowns, it is good enough, becauſe the general Uſe for poor Scholars, is truly found, and Books, or Gowns are but particulars of the imployment. So if they find a Gift to find Stones to repair high-ways, and the Gift was to buy Gravel to repair them, this is ſufficient; For they truly found a Gift for repair of highways, which is the general, though they miſſed in the particulars of Stones and Gravel.

A Gift to provide Books, and imployed in Gowns, is good. General Uſe truly found

If Gravel inſtead of Stone, it is good. Repairs was the general Uſe found.

So if they find a Gift to maintain poor Scholars in an Univerſity, it is well enough, though the Gift were to find two poor Scholars, Students in Divinity, for the general, or poor Scholars, is found truly.

Poor Scholars, inſtead of two poor Scholars. One Uſe inſtead of two is good.

If there be two, or more Charitable Uſes limited by the Donor, and the Jury find but one, yet the Inquiſition is good for that, if the other be found after.

If the other be found after.

But if the Jury vary in any general head, (from the truth of the Gift,) limited in that Act, that Inquiſition is void. And therefore,

Variance in any general Uſe.

If they find a Gift for relief of poor Scholars, which was for maimed Soldiers, or for repair of high-ways, where it is for Marriages of poor Maids &c. theſe Inquiſitions are inſufficient, becauſe they fail in the general, which is of the ſubſtance of the Charitable Uſe.

If a Gift for maimed Soldiers, be imployed for relief of poor Scholars. If for Marriage of Maids, & imployed upon High-ways theſe are void Inquiſitions, becauſe they fail in the general.

Lands

Covyn with an Heir.

Lands are devised to one for a Charitable Use, the Devisée by Covin with the Heir, waves the Devise; this is a fraud inquirable.

The Feoffée aliens in Mortmain, and purchases the Land of the King again, &c. this is a fraud.

Combination by Issue in Tail, with the Connusee in a Fine.

Tenant in Tail grants a Rent to a Charitable Use, and levies a Fine, with proclamation, the Issue in Tail combines with the Conusée, to bargain and sell the Land to his father, which lay sick, to the intent that his Father might dye seised, and the Rent might be avoided; this is a fraud.

Collusion by the Heir, with a Mortgagee, and Refusal of a Legacy.

A man deviseth a sum of Money to his Heir, to redeem certain Lands that he had Mortgaged, to the intent it should be imployed to a Charitable Use, the Heir refuseth the Legacy, and by collusion with the Mortgagée suffers the day to pass, and then redeems the Land this is a fraud inquirable.

Covyn by Husband, and disagreement to a Cha. Use.

Land is given to a Woman to a Charitable Use, the Husband, by Covin, disagrées to the Gift, this is a Fraud.

Younger Son after his Fathers and elder Brothers death, chargeable with a Cha. Use, though in by descent.

The Father gives Land to his younger Son, upon condition to perform a Charitable Use; the Father dies, the elder Son dies, yet the younger Son shall be bound to perform the Use, notwithstanding the condition was extinct by him by descent; and though the Father had released the Condition, yet the same had been lyable to the Use.

Lessor, upon a Recovery in value, chargeable with a Charitable Use.

Tenant for life surrenders with warranty in Fée to a Charitable Use, the Lessor recovers in value, he shall hold that Land charged with the Use for ever.

Twelve, a good Jury.

If 16 be impannelled on a Jury, and 12 only agrée, yet this is a good Inquisition, according to this Statute.

Commissioners may enquire by all other lawful means, as by former Inquisitions, Witnesses, Rentals, Accompts, Estreats, their own knowledge.

Besides this Inquisition, by the Oaths of 12 Men, the Commissioners may enquire by all lawful ways and means. Such are former Inquisitions, Witnesses, Rentalls, Accompts, Estreats, &c. and their own proper knowledge; And by these means they may supply the defects of the Inquisition, in matters of particularity and circumstance. As where the Inquest find a Gift to the Tradesmen of Bath, &c. The Commissioners by such further Inquiry, may supply the particular. To what sort of Tradesmen. So where the Jury finds a misimployment, the Commissioners may supply the time, how long it hath been misimployed, &c.

By what not, viz. By Cancelled Deeds. Witnesses disabled, Records Reversed, nor upon the Parties own Oath.

But if the Commissioners cannot enquire by Deeds that are cancelled, nor by Witnesses, that are disabled, no Records are Reversed, &c. neither can they examine the party upon his Oath.

The

The Commiſsioners cannot proceed without ſummoning the parties intereſted to be preſent. Thoſe parties only which are in poſſeſsion, ought neceſſarily to be ſummoned; and thoſe which have Rights, Titles, Pretences, (or pocket Titles,) may be omitted, and yet the Inquiſition good enough. Who to be ſummoned. Parties intereſted in poſſeſsion, which have Right or Title. Pocket Titles may be omitted.

Leſſee for years, the Reverſion for life, the Remainder over, the Leſſee muſt be ſummoned, and ſhall be bound by the Decree, but thoſe in remainder, ſhall not be bound, unleſs they were ſummoned. Leſſee of a Remainder, over. In Remainder not

If a Guardian by Knight-ſervice be ſummoned, and the Ward omitted, yet the Guardian ſhall be bound. Guardian by Knight-Service.

If an Infant in ſoccage, and his Guardian be ſummoned, both ſhall be bound by the Inquiſition, for an Infant is not excepted out of this Law. Infant in Soccage, and his Guardian.

So if a man that is not compos mentis, be ſummoned, he ſhall be bound by the Decree, becauſe he is not excepted, but his heir by Petition, by ſhewing of his Right, may be relieved, becauſe his Anceſtors were not Compos mentis, like Law of an Ideot. *Non compes.* His Heir relievable upon Petition. Like Law of an Ideot.

If there be two Joynt-Tenants, parties intereſted, and one of them only is called, this ſhall bind the Moiety only, during the life of the other Joynt-Tenant: But if he was ſummoned, and fortune to ſurvive the other, then the Inquiſition ſhall bind him for the whole. Two Joynt-Tenants. One ſummoned, binds a Moyety.

An Occupant is a party intereſted, that muſt be ſummoned, and he ſhall be bound by the Inquiſition, but the Decree ſhall not bind him in the Reverſion, but that he may avoid all without complaining, by Bill. An Occupant, But not the Reverſioner.

Tenant by Eſtoppel is a party intereſted, but the calling of him ſhall not bind the true owner, for any longer time, then the Eſtoppel ſhall continue. Tenant by Eſtoppel, But not the true owner.

If Tenant in Tail be called, his Iſſue ſhall be bound, ſo ſhall a Succeſſor, by the ſummons of his Predeceſſor, until the Decree be reverſed by Bill before the Chancellor. Tenant in Tail. Succeſſor by, Summons of his Predeceſſor.

If there be Mortgagers, and Mortgagee's of Land given to a Charitable Uſe, it is the ſafeſt way to ſummons both. Mortgager and Mortgagee.

Leſſee for years, upon condition to have the Fee to a Charitable Uſe, the Leſſee is ſummoned, he ſhall be bound for the term. But if he in the Reverſion be ſummoned, the Leaſe ſhall be bound for the Example, and his State increaſing, not for the term. Leaſee bound for his Term.

The Daughter and heir hath ſuch Lands by diſcent, and ſhe is ſummoned, then a Son is born, and after the Decree is made, the Son, though he be heir ab initio, yet he ſhall be bound by the Decree, becauſe the Daughter was the party intereſted, ſummonable at the time. Daughter and Heir by diſcent. And Son born after.

If

Grantee of a Reversion before Attornment, &c.

If a Reversion given to a Charitable Use, be granted over, the Grantée, before Attornment, is no party interessed to be called, yet the Reader made some doubt of this point.

Summons binds him, that is absent from the Inquiry.

If the party be summoned, the Decrée shall bind him, though he were absent from the Inquiry.

Executor and Legatory.

A Legacy is bequeathed to a Charitable Use, the Executor refuseth to assent to the Legacy, both the Executor and the Legatee ought to be summoned.

Obligor and Obligee.

If a stock of Money be given, to be put out upon security, both the Obligor, and the Obligée must be called.

Ordinary of one intestate, having Goods to a Charitable Use.

He that hath Goods to a Charitable Use, dies intestate, the Ordinary ought to be summoned, unless he hath committed the Administration.

A married Woman.

A married Woman that is interessed, ought to be summoned, and her default shall bind her Husband.

He that hath the nomination of an Almsman.

He which hath the nomination of the persons, upon whom the Alms ought to be imployed, is a party interessed to be called.

Persons receiving Alms, if the Charity be misimployed.

The persons which ought to receive the Alms, are not persons interessed to be summoned. But if the Alms have ben imployed upon such as ought not to have received them, they are parties interessed, and ought to be called.

Every wrongful possessor.

Every wrongful Possessor is a party interessed to be summoned, and Charged. The calling is a notice given to the person of the party interessed, concerning the Inquiry to be taken before the Commissioners, at a certain time and place.

Notice what

Notice to be given, and left, as *Subpœnas* in *Chancery*. and may be served any where.

And this notice may be given as Subpœnas use to be served, by leaving them at the dwelling house of the party, and notice may be given him in any County, or it may be given over-Seas.

The manner of notice.

The manner of the notice must be thus, Four of the Commissioners, at the least, must make a Precept, under their Seals, commanding the party, to be before them at such a place, upon such a day, about such a business, &c. And this Precept may be sent to the Sheriff, to give notice thereof to the party.

Four Commissioners make a Precept under their Seals

May be sent to the Sheriff.

If read in the Church where the party lives, it is good.

If the Precept be read in the Church, where the party is present, it is a sufficient notice and calling, if it be generally published in a Church, at Prayer, that all such as have interest in such Lands, shall be before the Commissioners, appoint another day of sitting, and give him notice thereof, this is a sufficient calling.

If generally published.

Notice of Adjournment.

Examination to be made, of notice before they proceed to Inquisition, upon Oath, ought to be entred.

It is good discretion in the Commissioners before they proceed to make Inquisition, to examine the Notice given, and the execution of their Precept, upon Affidavit, and to enter the same, to avoid a counter-averment.

A

A party intereſſed, not being ſummoned, was preſent at an Inquiſition, and gabe in ebidence, the Decrẽ was made againſt bim, and upon ſuggeſtion, after made by himſelf in the Chancery, that he was a party intereſſed, and not ſummoned; the Decrẽ was aboided, and a new Commiſsion awarded, Viners Caſe.

Decree againſt one not ſummoned, but preſent at the Inquiſition.

The party intereſſed, is ſummoned for two purpoſes, 1. To gibe in Ebidence. 2. To take his Challenge to the Jurors.

Why parties intereſſed are to be ſummoned.
To give in Evidence.
To take his challenge to the Jurors.

A party remotely intereſſed, may challenge a Juror, though he be not ſummonable.

A party not ſummonable. may have his challenge.

If the Commiſsioners allow a Challenge, which is not allowable, yet that will not bitiate their Decrẽ.

Challenge not allowable, yet allowed by the Commiſſioners. doth not vitiate the Decree.

But if they diſallow that, which is allowable, that will make their Decrẽ boid.

But è contra, if they diſallow what is allowable.

If there be two Joynt-Tenants, and one of them will take a Challenge, this ſhall be good, and bind his compantion, though he would releaſe it, and herein the Challenges upon this Statute, vary from the Rules of the Common-Law, for that ſaith, that thoſe which muſt joyn in Action, muſt joyn in Challenge.

Two Joynt-Tenants, firſt takes his challenge it ſhall bind his partner.
Challenges by Statute, vary from thoſe of the Common-Law
Thoſe which muſt joyn in action, muſt joyn in challenge.

The Commiſsioners may, by Information, put out a Juror without Challenge, by the party,

Commiſſioners may diſcharge a Juror without challenge.

Criminolity is a principal Challenge.

Criminous things a principal challenge.

Challenges by favour are tryable, but if ſuch a Challenge be denyed, yet the Challenge is good.

Challenges by favour if denyed, yet the Decree is good.

That the Juror is not Inhabitant in the County, is a principal Challenge. So is it, that he was ſworn upon a former Inqueſt.

Juror *non* reſident in the County, a good challenge.
That he was ſworn upon a former Jury.

No Challenge to the Array, is Compulſory.

No challenge to the array is compulſory.

If an Alien challenge the Jury, propter medietatem linque, becauſe the one halfe of the Jury are not Aliens, according to the Statute 27 E. 3. Cap. 8 & 28 Ed. 3. 13 Ed. 1. This Challenge is not allowable, becauſe that Statute is reſtrained to Inqueſts, taken to try iſſues, between party and party, and not to Inquiſitions of this nature. Beſides, that Challenge muſt be taken before the Venire facias awarded, and therefore where no Venire facias is to be awarded, there the Challenge cannot be taken.

If an alien challenge, *propter medietatem linguæ*, it is not allowable for the Statute of 27 *Edw.* 3. cap. 8. & 28. *Edw.* 3. 13.
Are reſtrained to Inqueſts, to try Iſſues, between party and party
That challenge muſt be taken before the *Ven. facias.*
Where no *Ven. fac.* no challenge lies.

Two Joynt-Tenants, parties intereſſed, one of them only is ſummoned; if the other be preſent at the day, this ſhall be accounted a good Summons of them both.

Summons to one Joynt-Tenant intereſſed, ſhall bind both.

If a party intereſſed be ſummoned to be of the Jury, this is no good Summons of him, as a party intereſſed, becauſe he is ſummoned being a party intereſſed, that he may come prabided with Counſel to gibe in Ebidence.

A party intereſſed, ſummoned to be of the Jury, is no good Summons

Upon the First Part of the Fourth Diviſion.

And after Hearing, and Examination, it ſhall and may be lawful for the Commiſſioners, or any four or more of them, to ſet down ſuch Orders, Judgements, and Decrees, as that the Lands, Tenements, Rents, &c. given to *Charitable Uſes*, may be duly and faithfully imployed, to, and for the Uſe, for which they were given, and not being repugnant, or contrary to the Orders, Statutes, or Decrees, or founders, which Decrees ſhall ſtand firm and good, and be executed accordingly, until the ſame ſhall be undone, and altered by the Lord Chancellor of *England*, or Lord Keeper, or Chancellor of the Dutchy of *Lancaſter*, upon complaint to be made to them. And herein are obſervable, five Points.

1. What Commiſſioners may make a Decree, and what Decree, Order, and Judgement, ſhall be ſaid to be good, and warranted by this Statute.
2. What Decree ſhall be ſaid to be made, according to the intent of the Donor, and what perſons ſhall be bound by ſuch a Decree.

Five Points

3. How ſuch a Decree may be executed.
4. What Decrees may be undone, or altered by the Lord Chancellor, upon complaint, either before or after execution.
5. What Adnullation, Alteration, &c. of ſuch Decrees by the Lord Chancellor, ſhall be good and firm within this Statute.

Reſolve.

Thoſe Commiſſioners that made the Inquiry, may make the Decree, &c. *ut in fol.* 12, 13, 14, 15, 16, 17, 18, 19.

What Commiſſioners may make a Decree.
What Decree according to the Donors intent
What perſons are bound by Decree.
What Decree avoidable, before or after execution.

Upon this fourth Point, are conſiderable.

1. What Commiſsioners may make a Decrée according to their Commiſsion, and warranted by this Statute.

2. What Decrée ſhall be ſaid to be made, according to the intent of the Donor.

3. What perſons ſhall be bound by ſuch a Decrée.

4. What Decrée ſhall be avoidable before execution, and what after execution?

None but ſuch Commiſſioners as were upon the Inquiry, may make the Decree.

Thoſe Commiſsioners that made the Inquiry, may make the Decrée, and none other, becauſe the words of the Statute are in the Copulative (ſhall make inquiry, and upon ſuch inquiry) and herein he compared this Caſe to a Bailment of a Priſoner; for if two Juſtices, upon examination,

examination commit a person suspected to prison; If other two Justices, which never heard of the examination, will bayl him, this is more than they ought to do, and by the opinion of the Justices, it is an indiscretion Finable; So if those Commissioners, which were not present at the Inquiry, will take upon them to make a Decrée upon the Matter, this is a point beyond their authority.

If two Justices commit one suspected, & other two bail him, it is finable.

The like Law in Commissioners, not present at the Inquiry.

A Bishop is named with other four Commissioners, the other four inquire, and at the making of the Decrée, one of those four is absent, but the Bishop is present, and joyns, yet this Decrée is void, because the Bishop was not at the inquiry.

If a Bishop intermeddle in a Decree not being present at the Inquiry, it is void.

If there be 8 Commissioners, and four make the Precept, the other four may inquire, and decrée; for the Decrée is not depending on the Precept, but on the Inquiry.

Four of eight Commissioners may Inquire and Decree.

Yet if three only make the Precept, though four Inquire and Decrée, yet all is void, because the Precept cannot be made by a less number than four, and then the ground failing, the building must fall.

If three make the Precept, and four inquire, all is void.

If six make inquiry, whereof four only are without exception, those four must make the Decrée, otherwise it will be void.

If four of six are without Exception, and make a Decree, it is good.

If four Commissioners be present at part of the Evidence, and one of them departs, and comes again at the giving of the Verdict, they cannot make a Decrée, because the Inquiry was not perfect by all of them.

If one of four be present at part of the Evidence, and go out and come in again, at the giving of the Verdict, no Decree can be made.

If four hear the Evidence, and adjourn the Jury unto another day, if any of them be absent, another which was not there at the first, cannot joyn with the rest, to make a good Decrée.

If four hear the Evidence, and adjourn, and another which was not thereat, joyn, he cannot meddle, or make the Decree good.

If three only hear the Evidence, and make a Decrée, and return it in the names of four, the Decrée is void, and an aberrment may be taken against such a Return.

If a Decree be returned by three, in the name of four, it is void.

Averment against such a Return, is good.

For the 2 Point, The Commissioners are restrained to three things, in the making of their Decrées and Orders.

Things considered in the 2 Point.

1. That it tend and conduce to the imployment of the things given.

1. That Commissioners, Decrees, and Orders, tend to the imployment of the things given.

2. That the imployment be faithful and due.

2. That the imployment be due.

3. That the imployment vary not from the use and intent, for which the thing was given.

3. That the imployment vary not from the Use.

These three things being observed, the Commissioners have power and authority to do five things more.

Five things they may do.

1. They may establish the property of the thing given, in the person to whom it was given, or they may transfer it from one person to another.

1. They may establish the property of a thing given to the Donee, or transfer it.

2. They may ſupply the defects of the Gifts, or imployment in certainties, circumſtances, and decencies.

3. They may ordain Conveyances, or Aſſurances to be made for the better imployment of the Uſe;

4. They may add decencies in the imployment for the honor of the Donor.

5. They may impoſe penalties for miſ-implopments.

Commiſsioners, by their Decrees, cannot confirm Leaſes, nor releaſe Debts, nor Stocks of Money, nor erect Corporations, nor remit Arrearages, nor decree that the Land ſhall be Leaſed at an undervalue, either in regard of the Fine, or the Rent, neither that it ſhall be Leaſed to their friends for the apparent preſumption of favour in undervalues; neither can they ordain, that their own ſervants ſhall be the poor, on whom the Charitable Uſe ſhall be imployed, eſpecially if they be able to maintain themſelves.

But if divers Rents be given to Charitable Uſes, the Commiſsioners may appoint Collectors to gather in the money, and allow them wages. So if money be given to be put out upon ſecurity, or Lands to be Leaſed, they may appoint one to be the Scribener to write Obligations and Conveyances, and allow him Fees for his pains.

In the 11 year of King Hen. 6. a Gift was made to the intent, to find a Chaplain, ad Divina celebranda, until the Feoffor, or his heirs, ſhould procure a Foundation, &c. there was no imployment, until the third year of King Edw. 6. And therefore in the Queens time, one Payne purchaſed the Land as a concealment. After a Commiſsion, being awarded upon this Statute, the Commiſsioners enquired and found the Gift, and thereupon agreed the property, to another from Payne; But after, this Decree was made void by the Lord Chancellor, becauſe the uſe limited to find a Chaplain, ad Divina celebranda, was no Uſe within the Statute, Inquirable, But the Chancellor by his Chancery Authority, may, and did decree the Land to the firſt uſe. For a Gift, cuidam Capellano ad Divina celebranda, in a certain Church or Chappel, is no Superſtitious Uſe within the Statute, 1 Edw. 6. and ſo was the opinion of the Juſtices in the Kings Bench, Term Paſchæ 3 Jac. and the reaſon is, becauſe it is the general caſe of all Parſons in England; but if the Uſe had been within this Statute, the Commiſsioners might have transferred the property.

The Commiſsioners may decree that one ſhall make a releaſe for aſſurance of the Land; they may decree that the party ſhall pay the Arrearages; and if they fail at the times, they ſhall pay a reaſonable penalty.

3. They may aſcertain the thing given in ſubſtance, circumſtances, and decencies.

3. Ordain Conveyances.

4. Add Decencies.

5. Impoſe penalties. But cannot confirm Leaſes, nor releaſe Debts, nor erect Corporations, nor remit Arrears, or Leaſe at an undervalue, either of Fine or rent; nor Leaſe to their friends, nor ordain their own ſervants to be poor, if able to maintain themſelves.

They may appoint Collectors to gather Rent, to allow them wages.

Appoint a Scrivener to draw their Bonds, and allow them Fees.

Property decreed to another, from a Grantee of the Q. To find a Chaplain, *ad Divina celebranda* no Uſe within this Statute.

Chancellors decree to the firſt Uſe, good. *Ad Divina celebrand.* in a certain Church or Chappel, no Superſtitious Uſe. Adjudged Paſch. 3 *Jac.*

Commiſſioners may decree a releaſe for aſſurances of Land. That Arrears ſhall be paid. Impoſe a penalty for non payment.

If the Uſe were limited for a Chaplain, they may decree, by addition, that the Chaplain ſhall be a Preacher. So they may appoint the nomination of him, to a man of Science, (as a Maſter of a College, &c because ſuch things concurr in decency and order, with the intent of the Founder, upon a Decree made, Ann. 40 Eliz.

By addition, That a Chaplain ſhall be a Preacher.

May nominate the perſon.

Concerning a Grammar-School of Northleeche, which is now incorporated in Parliament, 5 Jac. cap. 7. be obſerved five things.

Five things obſervable upon 5 Jac. c. 7.

1. That if there be a Grammar-School in a Town, and a man deviſe Land to certain perſons, upon condition that they ſhall procure that Grammar-School to be incorporated, and to find that Grammar-School in ſuch caſe, though the Corporation be not procured, yet the Profits muſt be imployed upon the School in being.

1. If a Grammar-School be given upon condition it be made a Corporation, though it never be a Corporation, the Profits muſt go to the School in being.

2. Though the heir enter for fault of imployment, yet he ſhall be charged with the Uſe.

2. An Heir chargeable with the Uſe, though he enter for default of imployment.

3. If they decree the Land to the heir, which hath entred, or might enter, by vertue of ſuch condition, the Decree is good, because he had colour to defeat the Uſe by Entry; but because the Uſe thereby ſeems better eſtabliſhed, the Decree is good, as if Tenant in Tail, Grants a Rent unto one which had a right for a Releaſe of his right, that Grant ſhall bind the Iſſue, in Tail, because it ſtrengthens his poſſeſsion.

The Decree good.

3. A Grant to one that had a right, ſhall bind the Iſſue in Tail.

4. If a Founder appoint the uſe of the Land to be for a certain number of the poor, and that every one ſhall have 12 d. The Commiſsioners may appoint, by way of increaſe, that every one ſhall have 20 d. But if the number of the Poor be limited in certain, by the Founder, the Commiſsioners cannot add any more poor to that number, upon whom the Uſe ſhall be imployed.

4. Commiſſioners may increaſe a Gift,

But not the number of poor, appointed by the Founder.

5. If a man Found a Free-School, and appoints the nomination of the Maſter to his heir, the Commiſsioners may decree it to be a man of Science, because it concurrs with the intent of the Founder, to have one of ſufficiency.

5. May nominate a School-maſter to be a man of Science.

In the time of King R. the 2. one Adderbury, by License Founded an Alms-houſe in Dennington in Berkſhire, conſiſting of a certain number, appointing, that his heirs ſhould have the nomination of the Poor; and after, in the Reign of King H. 7. his heir dyed without heir; now although the Corporation was determined for want of a Nominator; and the Commiſsioners may not erect or revive a Corporation, yet they, upon Commiſsion awarded, did, and might decree, who ſhall be a nominator; for the authority of nomination, could not Eſcheat to the Lord.

The Commiſſioners may appoint one to nominate the number of Poor, in caſe of the death of one appointed by the Donor.

The authority of nomination, cannot Eſcheat to the Lord.

If the Donor limit the Imployment of the Profits to perſons of one ſex, Quality, Nation, Trade, or Profeſsion, the

Commiſſioners cannot alter the Sex, or Quality, Nation, Trade, or Profeſſion, or transfer a Gift to another Sex, &c.

the Commissioners cannot decree the imployment to persons of another Sex, Quality, Nation, Trade, or Profession.

Nor from one Parish to another.
Nor from prisoners of one, to those of another Goal.

So if the imployment be appointed to be upon the poor of one parish, or the parishioners of one parish, or the prisoners of one prison; or the Scholars of one Gramar-School; in certain, the Commissioners power cannot decree it to the Poor of another parish, to the Prisoners of another Goal, nor to the Scholars of another School, for that were contrary to the intent of the Donor. So if the Use be limited for the use of divers purposes, or for relief of the Poor, and amending high-ways, &c. The Commissioners (cannot interleasing one) decree the imployment of the whole upon the other only; but they may by their Donor, appoint the time when, or the place where it shall be paid.

Nor a Use for divers purposes.
As for the Poor, and mending the High-ways of one to another Parish.
But the time and place of payment, and performance they may.

If the Use be limited for relief of many Soldiers, they may by Decree, add a Chyrurgeon, or Physitian, and allow them Fees for curing such Soldiers.

A Chyrurgion or Physitian, may be added to maimed Soldiers, by Commissioners, and Fees allowed them.

But if the Use be to ease a Parish of Fifteens, the Commissioners by their Decree cannot extend this to ease the Parish of Charges for Bastards born in the Parish.

They cannot transfer a Gift, for ease of Fifteens, to ease the parish of Bastards.

Yet if it be for relief of Poor, the Commissioners may ordain, that it shall be a Stock of Money to provide Hemp, Iron, &c. to set the poor in work upon.

May order a Stock, to set the Poor on work, if the Use be limited to the Poor.

If the Donor appoint the imployment to be in Money, Meat, or Apparel, the Commissioners cannot change the imployment,

If the Gift be for Money, Meat, or Apparel, Commissioners cannot alter it.

The Commissioners cannot decree the forfeiture of an Obligation to be taken, but they may impose a reasonable penalty for not paying at the day; they cannot, by their Decree, commit any man to prison, nor decree that he shall be prisoned; yet upon execution of their Decree, after the Writ awarded, and an Attachment served, the Lord Chancellor may imprison the party for execution of the Decree.

Nor decree the forfeiture of an Obligation, but may impose a Fine for non-payment.
They cannot commit to prison, but the Lord Chancellor, after a Writ awarded, and an Attachement, may.

If the Commissioners decree an Estate or Term to be void, they shall be void both in Estate and Interest; yet if the Lord Chancellor repeal that Decree, the party shall be restored to his Estate or Interest.

An Estate decreed void, is so in Estate and Interest, but the Lord Chancellor may restore the Estate.

The Commissioners may decree, That a House of Correction shall be erected by Deed inrolled, allowing 20 l. per ann. according to the Statute of 39 Eliz. cap. 5.

They may order the building of a House of Correction, and 20 l. *per Ann.* by Deed inrolled.

They may decree Land to a Corporation in esse without danger of Mortmain.

Or a Corporation in *Esse*, without danger of Mortmain.

If one that holds Land given to a Charitable Use, makes a Lease for years, to defraud the Use, and after grants a Lease in Reversion, upon consideration &c. to another, to begin

They cannot decree a second Lease, to commence before the expiration of the former.

to begin after the expiration, determination, or other boydance of the former; and the Commissioners decree, that the former Lease shall be void. Yet the second shall not begin, until the years be fully expired, because the Profits must be imployed to the Charitable Use, during the time of the former Lease. And this Case he compared with another, where a Lease in Reversion, as to commence upon the surrender of a former, it shall not commence upon conditional surrender.

They cannot decree a second Lease, to commence before the expiration of the former.

A Lease in Reversion shall not commence upon a conditional surrender.

They may decree the payment of the meine Profits, and Arrearages, and may charge the pernors pro rata, Resolved by the Judges,

Nota. Meine Profits and Arrearages decreed.

If a man having Lands given to a Charitable Use, give those in Marriage with his Daughter, to one that hath no notice of the Use, yet the Commissioners may decree this Gift in Marriage to be void, and dispose of it to the Charitable Use; for the advancement of his Daughter in Marriage, is no valuable consideration within this Act.

Pernors of Profits chargeable *pro rata*.

Lands given in Marriage to one that hath no notice of the Use, is void.

Marriage, no valuable consideration within this Act.

Unto a general limitation of the Giver, the Commissioners, by their Decrees, may add particular limitations; as if the Donor limit the imployment be to marry poor Maids: The Commissioners may decree, that such Maids which marry without the consent of their Parents, or within Age of consent; or which marry with their Rabishors, or which were gotten with Child before Marriage, or marry without the Orders of our Church; shall have no part of that Money, and such a Decree is good, because the additions are reasonable.

To a general limitation, a particular limitation may be added by Commissioners.

So when a sum in grosse is given to marry poor Maids; they may, by their Decree, set down how much every one that is married, shall have given with her.

They may apportion a sum, given in grosse.

So if a Gift be made to redeem Captives, they may decree that no part shall be imployed to redeem any Traytor, that is taken a prisoner, nor any enemy that is taken prisoner, unless he be taken Captive by the Turk.

A Stock of Money is given in deposito, to be expended in three years, about the repairing of a Bridge, if there be apparent likelyhood, that the Bridge without imployment of the whole, in a shorter time will fall down; they may decree, that the whole sum may be bestowed in a shorter time.

They may limit a shorter time, than the Donors Gift expresseth, in case of necessity.

As in case of a decayd Bridge.

But if a yearly Rent had been limited to be paid yearly, for such a purpose, though the cause were as urgent, they cannot decree that the Rent shall be paid before the day, for Rent is no duty, until the day of payment.

But Rent payable for that purpose, at a day certain, they cannot.

If a term to commence at a day to come, be granted to a Charitable Use, and the Grantee endeabours to defraud the Use; The Commissioners by their Decree, may transfer

Commissioners may transfer a Term, in case of Fraud.

Endeavour of Fraud, is a mis government and a forfeiture.

transfer that Term unto another, from the defrauders, for his mis-government, although the time that it should commence, be not then come; for an endeavour to defraud, is a mis-government, and a forfeiture. As in Cases in the Common Law, If a Guardian endeavour to disinherit the Heir, he shall forfeit his wardship, 12 H. 3. Fitz-H. Guard. 151. So if a Woman take a Feoffment of him that abates after the death of her Husband, she hath forfeited her Dower, because by accepting such an Estate from such a person, she endeavoured to disinherit the Heir, 11 E. 2. Fitz H. Dower 156.

As a Guardian his Wardship.

A Woman by acceptance of an Estate from an abater forfeits her Dower.

Goods given for a House of Correction cannot be otherwise imployed.

If Goods be given for a House of Correction, they cannot decree the Imployment out of the House.

For the Third Point, The Rule is,

Lord by Escheats shall be bound, for which see here a little after in this page, with this mark. ☞

Such as have Titles paramount, are not bound by Decree, though summon'd and at the Inquiry. But only such as the Donor, by his own Act hath bound. An Heir entring for Condition broken, is bound by Decree. But Tenant in Tail enters for Condition broken for a Charitable Use is not bound. But he take another wife, and have issue, and this issue enter, he shall be bound till the first issue recover.

That those which have Rights, Titles, Estates, and Interest paramount, the Donor shall not be bound by any Decree, though they were summoned, and present at the Inquiry: But all those whom the Donor might have bound by his own Act, or Conveyance, shall be bound by the Decree of the Commissioners.

If Tenant in Fee-simple make a Feoffment upon condition, to perform a Charitable Use, and his Heirs enter for the Condition broken, the Heir shall be bound by Decree: But if Tenant in Tail, make a Gift, upon condition to perform a Charitable Use, and his Heir enter for Condition broken, he shall not be bound by their Decree, because the Donor could not bind him. Yet,

If Tenant in Tail have issue, and takes another Wife, and then makes a discontinuance, and takes back an Estate in special Tail to the Heirs of their two bodies, and then makes a Gift to perform a Charitable Use; if this Heir enter, he shall be bound by Decree, until the first issue recover.

☞ Lord by Escheat is bound.

If there be Lord and Tenant, and the Tenant make a Gift to a Charitable Use, and dye without Heir, the Lord which hath the Land by Escheat, shall be bound by their Decree to perform the Uses.

If Lessor enter for a forfeiture, he is bound to the Cha. Use.

If a Lease be made to a Charitable Use, and the Lessee commits a forfeiture by Feoffment, &c. If the Lessor enter for the forfeiture, he shall be bound by Decree, during the years to come of that Lease.

Nota. Charitable Use not to be bound by Estoppel. ☞

If a man dis-seise the Feoffee to a Charitable Use, and purchase a collateral Warranty, which descends upon the

Feoffee

Feoffee, yet the Dis-seisor shall be bound by the Decree of the Commissioners, because the collateral Warranty, is but a Bond by Estoppel, and a Charitable Use shall never be bound by any Estoppel.

Nota. A Fine levied, and five years pass, yet the Tenant is bound. A Cha. Use is no interest in the Lands. This Statute made after those which bind Rights.

If a Tenant for Land, given to a Charitable Use, levy a Fine, and five years pass, yet the Decree shall bind the Tenants of the Land, because the Use is no Interest in the Lands, and this Statute of Uses was made after these Statutes, which bind Rights.

Nota. An Heir of a Disseisor, in by descent, is bound to a Cha. Use. No laches destroy a Cha. Use. A Conveyance upon good consideration, without Fraud, and no notice, may.

If the Heir of the Dis-seisor be in by descent of Lands given to a Charitable Use, yet he shall be bound by the Decree, for no laches of Entry shall never destroy a Charitable Use, nor any thing bar it, but a Conveyance to one upon good consideration, and without fraud or notice.

Nota. Statute of Limitations doth not extend to this.

Neither is a Charitable Use bound to the times expressed in the Statute of Limitations, made 32 H. 8. cap. 2. nor to that of 21 Jac.

Nota. A Recovery destroys the Remainder, whereupon a Cha. Use dependeth. But if he in Remainder, be a party to the Recovery, the Law is otherwise.

If there be Tenant in Tail, and the Remainder in Tail be limited over to a Charitable Use, and the Tenant in Tail suffer a Recovery with a double voucher, and the first Tenant dye without issue, the Commissioners cannot make any decree concerning that Use; because, by the Recovery, the Remainder, whereupon the Use depended, was destroyed. But if he, in the Remainder, had been party to the Recovery, the Use had continued, and should have been decreeable.

Nota. Statute of Bankrupts subject to this.

If a Bankrupt be a Feoffee, or Donee to a Charitable Use, , and after upon Commission his Lands are sold to his creditors, yet the creditors shall be bound by a Decree of Commissioners upon this Statute for the Use.

Nota. The like Law, in the Kings Accomptant, to the King.

So if an Accomptant to the King, be a Feoffee, the King shall be bound by the Decree for a Charitable Use.

Nota. Commission of Sewers, is preferr'd before this Statute.

A Commission for Sewers, is to be preferred before a Commission upon Statute of Charitable Use, if they concur not in jurisdiction, as if the Commissioners for Sewers decree that Land, which was given for repair of high-ways, shall be sold, &c. The Commissioners upon this Statute cannot make a Decree for the Charitable Use, because they vary in point of jurisdiction, and imployment of the Use. But if the Land decreed by Commissioners, for Sewers, were given for the repair of Sea-banks; the Commissioners upon this Statute may decree as well as they, because they agree in the imployment.

But both may Decree in repair of Seabanks.

Nota. Lands extended upon a Statute, subject to this, notwithstanding an Extent.

The Feoffee to a Use, acknowledges a Statute, and the Statute is extended to these Lands, and other; the Commissioners decree, that the extent, as for the Lands given to a Charitable Use, shall be void; It seems the party shall be driven to a new extent.

An Occupant is bound by this Statute.

An Occupant ſhall be bound by the Decrée of the Commiſsioners.

Nota. The King bound by this Statute.

If a Feoffée to a Charitable Uſe, conbey the Land to one for life, the Remainder to the King, the King ſhall be bound by the Decrée of the Commiſsioners, becauſe the Uſe was limited before the Titles of the King.

Nota. If the Kings Title commences with the Uſe, the party grieved muſt petition.

But where the Title of the King commences with the Uſe, there the party grieved muſt ſue by Petition; as where Lands are given for life, the remainder to the King to a Charitable Uſe.

Nota. Lord by Eſcheats, bound for the Tenancy, not for his ſervices

Lands given to a Cha. Uſe, eſcheats to the Lord, the Lord ſhall be bound by Decrée for the Tenancy, not for his ſervices.

Nota. Copyhold cannot be transferred by Commiſsioners.

They cannot by Decrée, transfer the property of a Copy hold.

But to admittance of a Tenant, the Lord is bound.

But they may decrée, that the Lord ſhall admit ſuch an one for Tenant, and the Lord ſhall be bound by their Decrée.

Nota. Bargainee by Feoffment, with power of Revocation, is not bound, though he had notice.

If a Feoffment be made to a Uſe, with a power of Revocation at the Will of himſelf and his heirs, and the Feoffor ſells the Land to another, the Bargainée cannot be bound by Decrée, though he had notice of the Uſe; becauſe if the Feoffor had made a Revocation, the Uſe had been deſtroyed, and the bargain amounts unto a Revocation. But if his heir ſell it unto another, which had notice of the Uſe, that Bargainée ſhall be bound by the Decrée, becauſe if the heir had reboked, he ſhould have held the Land lyable to the Uſe.

The bargain amounts to a Revocation.

If his Heir ſell to another, with notice, the Law is otherwiſe.

Nota. An obligation to a Recuſant for a Cha. Uſe, is ſubject to this Law.

If an obligation be made unto a Recuſant, conbict for ſecurity of money given to a Charitable Uſe; although the obligation cannot be put in ſuit in the name of the Recuſant, to whom it was made, becauſe he is a perſon Excommunicate, and ſo diſabled to ſue any Action, yet the Commiſsioners may decree the payment of the Money, and it ſhall bind the party to pay the principal, but not the forfeiture.

As to the Principal.

Nota. Executors may be forced to ſell Land. given for a Cha. Uſe

A man debiſes that his Executors ſhall ſell his Land, and that the Money which ſhall be received, ſhall be imployed to a Charitable Uſe; if the Executors refuſe to ſell it, the Commiſsioners, by Decree, may bind them to ſell it, and upon a Writ of Execution out of the Chancery upon the Decree, they ſhall be compelled to ſell it; and it ſeems in that caſe, if the Commiſsioners decree, that the heir ſhall ſell that Land, the heir ſhall be bound by the Decrée, becauſe the intent of the Debiſor was, that the Land ſhould be ſold to a Charitable Uſe.

The Heir alſo ſhall be bound by the Commiſsioners decree of ſale.

Nota. One Symons, an Alderman of Wincheſter, ſold certain Land to Sir Tho. Flemming, now Lord Chief Juſtice, then Recorder of that Town, and this was upon Confidence

to

to perform a Charitable Uſe, which the ſaid Symons declared by his laſt Will; that Sir Tho. Fleming ſhould perform the bargain, was never inrolled, and yet the Lord Chancellor decreed, that the Heir ſhould ſell the Land, to be diſpoſed, according to the limitation of the Uſe; and this Decree was made the 24 of Q. Eliſabeth, before the Statute of Caritable Uſes, and this Decree was made upon ordinary and judicial Equity in the Chancery; and therefore it ſeems the Commiſsioners upon this Statute, may decree as much in the like caſe.

Lands given upon Confidence, to perform a Truſt, though the Deed never was inrolled.

Decreed in Chancery to the Cha. Uſe before this Statute was made.

Upon ordinary judicial proceedings in Chancery.

If a Reverſion be granted to a Charitable Uſe, the particular Tenant ſhall be bound to attorn by the Decree of the Commiſsioners; and he ſaid, there are preſidents in the Chancery, where the Lord Chancellor hath decreed and compelled the Tenant to attorn.

Nota. Particular Tenant in Reverſion, bound to Attorn.

Sir Tho. Bromley decreed, and compelled the Terr-Tenant, to give Seiſin of a Rent-ſeck, to the intent the party might bring an Aſsiſe.

Nota. Ter-Tenant compelled to give Seiſin of a Rent-ſeck.

One having a Leaſe for many years, at an eaſy Rent, makes an under Leaſe for leſs years, upon a rack-Rent, and then grants his Reverſion; the Tenant refuſes to Attorn, it may be decreed that he ſhall; Mallories Caſe depending.

A Leſſee for many years, at an eaſy Rent, makes a Leaſe for fewer years at a Rack-Rent, and then grants his Reverſion. The Tenant is compellable to Attorn.

If Goods be deviſed to a Charitable Uſe, the Commiſsioners, by Decree, may bind and compell the Executors to deliver the Goods.

Nota. Executors compellable to deliver Goods given to a Cha. Uſe.

Upon the Fourth Point.

If three Commiſsioners only make the Precept, this may be ſhewed in the Court, and the Decree avoided without Bill. If a Decree be made without Inquiſition, it is avoidable by ſuggeſtion without a Bill.

Nota. If three Commiſsioners only make a Decree. If without Inquiſition, they are avoidable without Bill.

But if a Decree be made without calling the parties, or if the party be denyed his lawful challenge, ſuch a decree cannot be avoided, but at the ſuit of the party, by ſhewing his Title, upon Bill, as a party grieved; becauſe the Chancellor is to judge of Titles.

Nota. If a Decree be made without calling the parties, not relievable but by Bill in Chancery. If the party be denyed his lawful challenge, not relievable, but by Bill in Chancery.

If the Commiſsioners, by their Decree, miſ-proportion Allowances, or Decree Conveyances to be made unto others, after precedent judicial proceedings upon the Title, the Decree muſt firſt be executed, before any as a party grieved, ſhall be admitted as a party grieved, to avoid the Decree by Bill of complaint.

Nota. If after judicial proceedings upon the Title, Commiſſioners decree Conveyances, or miſ-proportion allowances. The Decree muſt firſt be executed, before any relief can be had by Bill or Complaint.

Upon the Second Part of the Fourth Diviſion.

Nota.
Property transfer'd by Decree, may be entred without Writ of Execution.
Entry by a Reverſioner upon a Leaſe decreed void, is good without Writ.
A Releaſe decreed void, not pleadable in Barr.
Tenant may retain his Rent.

If a Decree be made to transfer property from one perſon to another, the party to whom it is decreed, may Enter, or take it, without a Writ of Execution.

So if a Leaſe for years, be decreed to be void, he in the Reverſion may enter without a Writ. If a Releaſe be decreed to be void, it cannot be pleaded in Law. If the Decree diſcharge a Tenant for Rent, the party may plead the decree in Barr of an Action brought for the Rent: and the Tenant ſhall execute the Decree by way of retaining. If the Commiſsioners decree, that Evidence ſhall be delibered, the voluntary deliverance of them is good, without Writ; but no voluntary performance, is a good performance, or execution of the Decree, without certificate by the Commiſsioners, becauſe no Decree can be made warranted, by this Statute, but ſuch as may be cenſured by the Lord Chancellor; unleſs it be certified, and therefore no Decree good by this Statute, without a Certificate.

Voluntary delivery of Evidence decreed, is good without Writ.

Without Certificate of Commiſsioners, no voluntary performance of a Decree, is good.

No Decree good upon this Statute, without a Certificate.

Lord Chancellors Power.
Execution upon a Decree awarded, or ſtaid by Lord Chancellor.

Concerning the awarding, or ſtaying Execution by the Lord Chancellor, touching Decrees made by the Commiſsioners, he conſidered three Points, upon two Branches of the Statute.

What to be awarded.

1. What Decree ſhall be ſaid to be ſo made, that the Lord Chancellor ought to award, or ſtay execution thereupon.

What to be certified.

2. What Decree ſhall be ſaid to be ſo certified, as the Lord Chancellor ought thereupon to ſtay, or award execution.

What manner of execution well made and certified.

3. What manner of Execution the Lord Chancellor may award, for the execution of their Decrees, well made and certified,

Nota.
If one of four be diſabled; If of any thing out of their Commiſſion.
Or againſt the Common Law, or Ordinances of the Church
Repugnant to the Donors intent, are good cauſes to ſtay execution.

For the Firſt, If four Commiſsioners make a Decree, and one of them was a perſon diſabled; or if they make a Decree of any thing out of their Commiſsion, or decree any thing againſt the Common Law, or Statutes, or Ordinances of the Church, or barring, or repugnant to the intent of the Founders or Donors, &c. And theſe and the like be ſhewed unto the Chancellor, becauſe it appears, that the Decree was not well made, the Chancellor ought to ſtay execution.

Record of a Certificate, may be averr'd by word of mouth, and ſtay execution.
But ſuch as are not upon Record, muſt be in Writing.

All theſe things which appear upon the Record of Certificate, may be alledged by word, to ſtay execution. But ſuch as are not apparent upon the Record, muſt be ſuggeſted

ſuggeſted and ſhewed in Writing. And whereſoever, upon ſuggeſtion, the Chancellor ſhall ſtay execution, he ought preſently to put the party, at whoſe ſuit it is ſtaid, to make proof of the truth of his allegations.

Stay of Execution cannot be, but upon proofs of Allegations firſt made.

For the Second Point.

Notæ.

a Points.

If four Commiſsioners make the Decree, and other four make the Certificate, yet the Lord Chancellor ought to execute the Decree, becauſe the Certificate is but a ceremony. If four Commiſsioners, whereof one is a party intereſſed, or otherwiſe diſabled to be a Commiſsioner, to make a Certificate, although the Commiſsioner which made the Decree, deſired him that was a perſon diſabled, to make a Certificate, yet this Decree is not to be executed by the Lord Chancellor.

Four make a Decree, and four the Certificate, yet the Decree ought to be executed.

The Certificate is but a ceremony.

If a Commiſſioner diſabled, make a Decree, though deſired; The Lord Chancellor ought not to execute the Decree.

If one that was a Recuſant at the time of the Commiſsion awarded, and after conforms himſelfe, make a certificate of the Decree; the Decree ought not to be executed, becauſe he was no lawful Commiſsioner at the firſt.

If a Recuſant Commiſſioner conforms after, Certify, yet the Decree is not to be executed.

If a Commiſsioner hath put his hand and Seal to the Certificate, and dye before it be brought into Court, yet the Decree ought to be executed.

If a Commiſſioner certify, and dye before it be brought into Court, the Decree ought to be executed.

If after the Decree made, and before Certificate, all the Commiſsioners dye but three, thoſe three cannot certify, if they do, the Decree is not executable.

If all but three dye after a Decree, and before Certificate, yet the Decree is not executable, for three cannot certify.

If the Certificate be not made within the time limited by the Commiſsion, yet if voluntarily, or upon Certiorari, the Commiſsioners certify afterwards, the Decree is good, and ought to be executed; becauſe the not certifying was but a contempt, and finable, and the time of certifying is but a circumſtance, added to the Certificate, and no Condition limited by the Statute, to make the Decree void.

If Certificate be not made in time, Yet if voluntarily, or upon *Certiorari*, tis good.

Not certifying, is but a contempt, and Fineable, the time is but a circumſtance, and no condition by this Statute, to void a Decree.

If after the Commiſsioners have put their Seals to the Certificate, they all dye, and a Certiorari be directed to Executors of the ſurviving Commiſsioners, which return the Certificate; the Decree is ſo certified, that it ought to be executed.

If all the Commiſſioners dye, and a *Certiorari* be directed, the Executor of the ſurvivor, returns the Certificate, and good, and the Decree ought to be executed.

It is of neceſsity requiſite, that both the Decree and Certificate be made, and certified under the hands and Seals of the Commiſsioners, for their Seals are eſſential to their Decrees and Certificates.

Seals are Eſſential to a Decree, and to a Certificate.

Every Certificate muſt be made in a ſeveral Parchment, under the Seals of four Commiſsioners, and not upon

Certificates muſt be made in ſeveral, by four Commiſſioners,

And not indorsed upon the back of the Commission. Commissioners may make a return, and keep the Commission it self.

upon the back of the Commission, by way of Indorsement; for the Commissioners may make return of the Commission, and yet keep the Commission it self in their own custody.

Concerning the Third Point.

The Lord Chancellors power of Execution.

Concerning the manner of execution of a Decree. Referred to the Lord Chancellor, and ought to be according to the usual course of Justice and Equity. The usual course is to award a Writ of Execution upon the Statute, and, upon that, Attachement and Imprisonment. Lord Chancellor may award an *Haberi facias seisinam*. And a Decree to keep possession. And generally, the Chancellor doth award an *Haberi facias seisinam*. If for an Estate to be executed, then a Writ of Execution, an Attachment, Imprisonment. If for payment of Debts, an Attachment, Imprisonment, and Fine, or an *elegit*, or *fieri fac.* These three manners are warrantable. Lands and Goods liable to Execution, are only such as are liable at the making of the Decree, and not at the Teste of the Commission.

The manner of execution is referred to the Lord Chancellor, and yet his discretion should be limited and confined in awarding process of Execution, unto the usual course of Justice, in Courts of Justice and Equity. But the usual manner is to award a Writ of Execution, framed by advice, for that purpose, upon the Statute; and after that, an Attachment, and then Imprisonment of the party, until performance; but he may at his pleasure award an Habere facias seisinam, if the Decree concerned the disposing of Land: and thereupon may also Grant a Commission to keep the party in possession. And for the most part, the Chancelor useth, 1. If the Decree concern the realty, to award the Writ of Habere facias seisinam. 2. If for an Estate to be executed, then a Writ of Execution, an Attachment, Imprisonment and Fine. 3. If it be concerning the payment of a debt, &c. then either an Attachment, Imprisonment and Fine, or an Elegit, or a Fieri facias, and these three manners and sorts of Executions are usual and warrantable.

Nota. Bankrupts Lands given to a Cha. Use, sold to one that had no notice, may be decreed to that Use.

Decrees upon this Statute, shall make those Lands and Goods only lyable to execution, which the party bound by the Decree, had at the time of the making of the Decree, not at the day of the Teste of the Commission.

If the Commissioners upon the Statute of Bankrupts, sell the Land which the Bankrupt had to a Charitable Use, and that to one that had not notice of the Use, yet the Commissioners, upon this Statute, may decree for so much as is given to the Use.

Nota. Money in a Bankrupts hands to that use, shall be liable as a Creditor, and be shar'd accordingly.

If Money given to a Charitable Use, comes to the hands of one that becomes Bankrupt, the Charitable Use shall come in but like a Creditor, and share alike as other Creditors; otherwise of Land.

Nota. If a Recusant Convict, give a Cha. Use, and after the offence committed, it binds the King, as to the Cha. Use.

If a Recusant, after the offence committed, give Lands to a Cha. Use, and after be convicted, yet a Decree shall bind the Land for a Charitable Use, because the forfeiture is intended, not for any advancement of the Revenue

nue of the Crown, but for a punishment of the Offender.

If an Accomptant give Lands to an Use, and after be found in Arrearages, no Decree shall bind the King, for the Use in this case, because such Land was intended, part of the Kings Revenue; and a Charitable Use must give place to the Treasure of the Crown.

Nota. If an Accomptant give Lands, and be found in arrear, no Decree shall bind the King. A Cha. Use must give place to the Treasure of the Crown.

If a man marry a Woman that hath Goods given to a Charitable Use, the Goods of the Husband shall be bound to Execution, but neither his Body nor his Lands.

The Goods of the Husband shall be bound for a Cha. Use given to the wife before Coverture.

If a Decree be made against Executors, to pay certain Moneys to a Charitable Use, in regard they had wasted the Assets that they had, and was payable to the Charitable Use; In this case, Execution may be awarded upon their own Goods, and upon all their Land, which they had at the time the Decree was made; But if the Decree was not made upon the Devastment, but for contempt, or not payment, the Execution shall not be extended to their Lands.

Nota. Wasts of a Cha. Use by Executors, are chargeable upon their own Goods, and so are their Lands, which they had at the making of the Decree. If the Decree be made only upon contempt for not payment, the Lands are excused.

A Decree made against the Ancestors, or the Testator, shall not be executed against the Heir, or Executor, with a Scire facias, first awarded.

A *Scire facias* must be first awarded, before any Decree can be executed against an Ancestor, or a Testator.

Upon the Third Branch of the Fourth Division.

There is given to the Lord Chancellor, a Directory declaratory, and additionary, and compulsory power by this Statute, which he may exercise, upon complaint by a party grieved, that the Commissioners have not pursued their authority.

What compulsory power is in the Lord Chancellor.

A party grieved is, whosoever hath bonum omissum, or malorum commissum by the Decree. Whosoever is interessed, and hath a property and ownership of Goods and Lands to his own use, whosoever by the Decree hath prejudice, either in Law or Equity, is pars gravata, and may complain by Bill.

Who may justly complain. Whosoever hath *bonum omissum*, or *malorum Commissum* by the Decree. Every one interessed in property, to his own Use. Any one that hath prejudice by the Decree in Law or Equity.

But where the prejudice is common or general, there every man may complain as a amicus curiæ, not as a party grieved, as where Lands given to repair Bridges or high-ways, which are publick easements, there any man may complain, if the Decree limit the Use to any other purpose.

Nota. Generally. Every one where the prejudice is general, may complain as *Amicus curiæ*. As for reparation of High-ways, &c.

If a Stock be given to be lent out to poor Tradesmen of a Town, and this be decreed only to Clothiers; the other Tradesmen are pars gravata. So if to Artisans and it be decreed only to Haberdashers, &c. the other are pars gravata.

If a stock be given to poor Tradesmen in general, be decreed only to Clothiers, all other Tradesmen are *pars gravata*.

If

A Cha. Uſe charged upon a Dower, the Wife, *poſt mortem*, is *pars gravata*.

If a Decree be made againſt a Huſband, of Land, whereof the Wife was Dowable; the Wife, after the death of her huſband, is a party griebed. So if a Decree be made againſt a Daughter for Land deſcended, the Son that is born after, is a party griebed.

Nota.

So of Land deſcended to a Daughter, and a Son born after, the Son is *pars gravata*.

If a Termer upon a Condition, that he ſhall not alien, without the conſent of his Leſſor, debiſe that his Executors ſhall ſell it for a Charitable Uſe; the Commiſsioners decree, that the Executors ſhall ſell it, the Leaſor is not pars gravata.

Nota.

The Leſſor of a termor upon condition, &c is not *pars gravata*.

Every one which hath a Title, paramount the Decree, is a party griebed: but the Feoffee or Aſsignee, after Inquiſition, is no party griebed.

Nota.

Title paramount this Decree, is *gravata perſona*.

Feoffee, or Aſſignee, after Inquiſition, is not.

If a Decree is made againſt one that is Bankrupt, at the time for Goods, every Creditor, is pars gravata, but not for Lands.

Every Creditor after a Decree againſt a Bankrupt, at the time for Goods, is *pars gravata*.

If a Decree be made againſt an Anceſtor, a Teſtator, or one that dies inteſtate, the heir, the Executor, or Adminiſtrator, is a party griebed; So is every one that claims, by Eſtoppel, during the time of the Eſtoppel.

The Heir, Executor, or Adminiſtrator of an Anceſtor, Teſtator, or Inteſtate, is *pars gravata*. So is every one that claims by Eſtoppel, during the time of the Eſtoppel.

Upon the laſt Part of the fourth Diviſion.

The Chancellors predominant Power.

IN reducing the Decree to the intent of the Donor, the Chancellor hath a predominant Power; but if the intent of the Donor was not lawful, or the Gift had no good ground, though the Decree concurr with the intent of the Donor, yet ſuch a Decrée cannot be altered, but muſt be annulled; And therefore,

If the intent of the Donor was not lawful, nor the Gift a good ground, though the Decree concurr with the Donors intent, yet ſuch a Decree cannot be altered, but muſt be nulled.

If a man debiſe that his heir, as often as ſuch a Church ſhall become void, ſhall preſent a poor Scholar of ſuch a Colledge; and that the Clark preſented, ſhall have a certain ſum of Money to the repair of High-ways; and the Commiſsioners decrée accordingly: this Decrée is to be annulled, and made void, although it be according to the intent of the Donor, becauſe the Uſe for High-ways, depends upon Symony.

Nota.

Where the Uſe depends upon Symony, the Decree muſt be nulled.

If the King grant the penalty of divers Statutes to a man, to a Charitable Uſe, and the Commiſsioners decrée accordingly, yet the Decrée muſt be annulled, not altered, becauſe the Original was not warrantable.

Nota.

The Kings Grant of the penalties of Statutes, to a Cha. Uſe, and the Commiſsioners decree accordingly, is not warrantable.

So if an Impoſition be granted, that every one that brings ſo much Corn to the Market, ſhall pay 2 d. towards the repair of ſuch a Haven, though it be decreed accordingly; yet the Decrée muſt be annulled, not altered, becauſe the Impoſition was not lawful.

So if an Impoſition be granted, for bringing Corn to a Market.

But

But if the Grant had bᵉn, that every one which ſhall tranſport ſo much Corn over Sea, ſhall pay ſo much for the repair of the Haven; a Decree made accordingly, had bᵉn good, and executable, becauſe the Grant was lawful. — But if for exportation, it is good.

If the Commiſsioners decree, that the arrearages of the Profits, given to a Charitable Uſe, ſhall be paid in two years; the Lord Chancellor may alter the Decrᵉ, in the point of time, and limit a longer or ſhorter day of payment. — *Nota.* Lord Chancellor may limit a longer or a ſhorter time, than is appointed by the Donor.

If the Gift be general, for the maintaince of a School; and the Decree be made for a Grammar-School, the Lord Chancellor may alter the Decrᵉ, and appoint it for a Writing-School. — A general to a particular Uſe.

If the Donor give Money to be lent to poor Tradeſmen, and the Decrᵉ limits the time, how long they ſhall have it, yet the Lord Chancellor may limit a longer or ſhorter time of the Loan. — Money lent, to be paid ſooner or latter.

But if the Gift be given to make a Cauſeway in a place certain, and it is decrᵉd accordingly, the Lord Chancellor cannot alter the place; but he may change the imployment, from a Cauſeway, to make a Bridge, if his diſcretion think fitteſt, becauſe the paſſage was the Principal; which being obſerved, the conveniency, whether a Cauſeway or a Bridge were fitteſt, is in the Chancellors diſcretion to appoint. — But a place certain, his Lordſhip cannot alter, as a Cauſeway.

If the Donor ordain, that the relief be given in Bread, and it be decrᵉd accordingly, the Lord Chancellor cannot alter the relief to be given in Money, for the kind ſhould be charged. So if the relief be appointed to be given at Chriſtmas, the decrᵉ according, cannot be altered to another Feaſt, becauſe the honor of the particular Feaſt, ſeems eſſential to the Gift. So if the Gift and Decrᵉ be, for ſuch Poor, as ſhall come and hear a Sermon at St. Pauls, it cannot be altered to Weſtminſter, for the place is material. — *Nota.* Nor the kind of any thing given. Nor from *Chriſtmas* to any other Feaſt. Nor from *St. Pauls* to *Weſtminſter.*

If the Decree ordain, that an aſſurance ſhall be madᵉ by Feoffment, the Lord Chancellor may alter the form, and limit the aſſurance to be made by Fine. — The form of an Aſſurance, his Lordſhip may alter.

If the Decree charge the Heir, the Lord Chancellor may change it, and lay it upon the Executor, Et è converſo, for both are chargeable, if they have Aſſetts; or he may divide the charge at his pleaſure. — *Nota.* He may charge the Executor inſtead of the Heir. *Et è converſo*, or may divide the charge.

So if the Decree charge the Overſeers for the Poor, he may change it, and lay it upon the Churchwardens, Et è converſo, or may divide it between them at his pleaſure. — *Nota.* The Churchwardens inſtead of the Overſeers, of the Poor may be charged.

But if a Gift be made general, ad pios uſus, and the Decree limit the imployment for repair of high-ways, — *Nota.* But a Gift general *ad Pios uſus*, is not alterable.

Nor a General reduced to a Certainty.

this Decree is not alterable to another Uſe, becauſe the Commiſsioners have lawfully firſt reduced, the generalty to a certainty.

Nota.

A Charity given to the Uſe of J. S. ſhall nominate, is not good, but muſt be annulled.

If a Gift be made to ſuch a Charitable Uſe, as J. S. ſhall nominate, though J. S. do nominate, and the Commiſsioners decree, yet the Decree is not alterable, but muſt be annulled.

Nota.

But if to ſuch a Uſe as the Commiſsioners ſhall appoint in Certain, it is good.

But if the Gift had bin to ſuch a Charitable Uſe, as the Commiſsioners upon this Statute, ſhould aſsign, and the Commiſsioners by Decree, had appointed one, in certain, this Decree were good, and not alterable by the Chancellor, becauſe they firſt reduced the Gift to a certainty.

Upon

Upon the Fifth Diviſion.

Provided that this Act, *&c.* ſhall not extend to any Lands, *&c.* given, *&c.* to any Colledge, Hall, or Houſe of Learnin, within the Univerſities of *Oxford* or *Cambridge*, or to the Colledges of *Weſtminſter*, *Eaton*, or *Wincheſter*, or any of them; or to any Cathedral, or Collegiate Church within this Realm. Nor to any City or Town-Corporate, nor to any Lands, &c. within any ſuch City or Town-Corporate, where there is a ſpecial Governor appointed to govern or direct ſuch Lands to the Uſes aforeſaid. Nor to any Colledge, Hoſpital, or Free-School, which have ſpecial Viſitors or Governors, appointed by the Founders. *Upon the Fifth Branch.*

1. In what Caſes, Lands, &c. and Goods, &c. given to Colledges, Cathedral Churches, &c. are exempt out of this Act. *3 Points.*
2. In what Caſes, Lands given to Towns-Corporate, or Cities, are exempt.
3. In what Caſes, Lands &c. given to Hoſpitals, or Free-Schools, are exempt.

The Proviſo of exempting Lands, &c. muſt be conſtrued ſtrictly, &c. *ut in fol.* 19. *Reſolve.*

The Proviſo of exempting Land, muſt be conſtrued ſtrialy, and not be taken by Equity, unleſs in very ſpecial caſes, becauſe the body of the Statute is a beneficial Law; and therefore, Proviſo of exempting Lands, muſt be taken ſtrictly, and not by Equity.

The Proviſo muſt be taken litterally in three Points.

1. It ſhall extend only to Corporations in eſſe, at the time of making the Statute, and not to be ſtretched to ſuch as ſhall be made after. *Nota.* Literally. 1. To Corporations in *Eſſe*.

2. It ſhall not be extended to Lands, &c. which are given after the making of the Statute, though the Corporation, &c. were in being, at the time that the Act was made. 2. Not to Lands given after the Statute.

3. It ſhall not extend to Goods and Chattels, given to Cities, &c. becauſe Lands only are mentioned in the Proviſo. 3. Not to Goods and Chattels, given to Cities, &c.

Yet by Equity, it ſhall be extended in two caſes. *Nota.* But in two Caſes it may by Equity.

1. If there be inferior or petty Corporations, as Companies of Mercers, Grocers, &c. in a greater Corporation, as the City of London, it ſhall be extended, by Equity, to ſuch Companies or Corporations. 1. To petty and inferior Corporations.

2. Though Colledges be only mentioned, yet the whole Univerſity, which is a body politick, ſhall be taken, by Equity, to be within the Proviſo. 2. To the whole Univerſity, though Colledges be only mentioned.

Three things requisite to bring any thing within the Proviso of this Act.

To bring a Gift within the Proviso, three things are requisite.

Nota.

1. That the Gift be made to a body Politique.

1. That the Gift be made to a body Politick; not to a part, or principal Member, as to the Dean and Chapter, not to the Dean alone.

2. That the imployment be to a Corporation.

2. Not only the Gift, but the Imployment also must be limited to a Corporation, yet if the Gift be to the Chief, or grand Corporation, and the imployment limited into an inferior Corporation within it, it shall be exempted.

3. The Corporations, &c. must have power to execute.

3. The Corporations, Oversèers, or Governors must be able, and have power to execute and imploy the use, in as ample manner, as the Commissioners may do; otherwise, if they cannot cause the use to be imployed, the Commissioners may intermeddle, and the Proviso shall not save them.

Otherwise the Commissioners may intermeddle.

A Gift to a Colledge, to pay 20 l. *per Ann.* to a Parson, for Cha. Uses, is not within the Proviso.

A Gift was made unto a Colledge, to pay 20 l. unto a Parson, to distribute amongst the poor of his Parish; this Use was not within the Proviso, because the Colledge hath no power to compell the Parson, to distribute the Money.

But if to a City, to be imployed by the Mayor, it is otherwise.

But if the Gift be to a City, to be imployed by the Mayor, it is exempted, because he is part of the Corporation; so if the Gift be to one Corporation, as to a Colledge, and the imployment of the Use, limited to another Corporation, as a Town or City; this is within the Proviso, because, both the property and the imployment are appointed to a Corporation, though several, and shall not amount to as much, as if both were one.

If to one Corporation, and the imployment to another Corporation or City, it is within the Proviso.

Nota.

A Corporation for part, Commissioners may deal for the whole.

Majus dignum trahit ad se minus dignum.

Increase of Relief, is exempt from the Proviso.

If the Corporation can deal but for part, the Commissioners shall have jurisdiction for the whole, Majus dignum trahit ad se minus dignum. If a Gift be made at this day to an Hospital, which hath a Governor appointed by the Founder, and the Gift be for increase of relief of the poor; this increase is exempted, as well as the foundation, from the jurisdiction of the Commissioners.

An Hospital in reputation, is exempt.

If it have a Governor appointed, &c.

An Hospital in reputation is exempt, as well as if it were a Corporation, if it have a Governor appointed by the Founder; and therefore a Gift to the poor Knights of Windsor, for increase of their allowance, is exempt, because they have the Dean and Cannons, for they are Supervisors by their Founder; and although they are provided otherwise to live, yet because they live upon Alms, a Gift made unto them, is within the Charitable Uses of this Statute.

As Dean and Chapter of *Windsor*.

Upon

Upon the First Part of the Sixth Diviſion.

Provided, that no perſon, who hath purchaſed, or obtained, or ſhall purchaſe or obtain, upon valuable conſideration of Money or Land, any Eſtate in, or intereſt of, in, to, or out of any Lands, Tenements, Rents, Annuities, Heraditaments, Goods, or Chattels, that have been, or ſhall be given, limited, or appointed to any of the Charitable Uſes above-mentioned, without Fraud or Covin, having no notice of the ſame Charitable Uſes, ſhall be impeached by any Decree, or Orders of Commiſſioners, for, or concerning the ſame, his Eſtate or Intereſt. And upon this Proviſo, I ſhall obſerve theſe Points. *The Sixth Branch.*

1. What ſhall be ſaid a Purchaſe, or obtaining upon valuable conſideration of Money, or Land, of any Eſtate or Intereſt, of, in, to, or out of any Lands, &c. given to any Charitable Uſe within the Proviſo of this Statute. *Four Points.*
2. What a valuable conſideration.
3. What ſhall be Fraud or Covin within this Act.
4. What notice ſufficient to charge a Purchaſor.

If the firſt Purchaſor gave a valuable conſideration, &c. *fol.* 20, 21, 22. *Reſolve.*

Notice.

IF the firſt Purchaſor gabe baluable conſideration, and yet hath notice of the Uſe; All that claim in pzibity under his Eſtate and Title, whether they habe notice oz not, ſhall be bound by the decrées of the Commiſsioners. But,

The firſt Purchaſor, though upon valuable conſideration, having notice, And all in Privity of the Eſtate under him, are bound by Commiſſioners Decree.

If the firſt Purchaſor foz baluable conſideration, had no notice of the Uſe: none of thoſe which come after him in pzibity of Eſtate oz Bloud, ſhall be impeached by the decrées of the Commiſsioners, although they habe notice of the Uſe; becauſe the firſt Purchaſor, from whom they decrée their Title, was exempted from their authozity.

Otherwiſe it is, if the firſt Purchaſor had no notice.

J. S. which hath notice of the Charitable Uſe, purchaſes the Lands foz baluable conſideration, in the name of B. who hath no notice of the Uſe; yet B. ſhall be chargeable, becauſe in truth, J S. was the Purchaſor, and he had notice, which runs with the Purchaſe.

J. S. having notice, purchaſeth in the name of *B.* who hath no notice. *B.* is chargeable with the Cha. Uſe. Notice runs with the Purchaſe.

A married Woman which hath notice of the Uſe, purchaſes the Land foz baluable conſideration, if the Huſband be afterward Tenant, by the courteſy of theſe Lands, he ſhall be charged by Decrée, though he had no notice of the Uſe, becauſe he claims his Eſtate, under the Eſtate of her, which had notice, and was lyable.

Tenant by Courteſy is chargeable, though he have no notice.

So

A Wife endowed, ſhall be bound by the notice of her Husband.

So if the Wife be endowed of Lands, which were given to a Charitable Uſe, and her Husband purchaſed, having notice of the Uſe, ſhe ſhall be bound by Decree, though her ſelf had no notice, for ſhe claimed her Eſtate from her Husband, who had notice, which ſhall bind her and her Eſtate, coming from him in priviry, by courſe of Law.

The Lord to whom Land Eſcheats, is chargeable by the notice of the Tenant

So if there be Lord and Tenant, and the Tenancy being given to a Charitable Uſe, is purchaſed by one that hath notice, who dies without heirs; the Lord to whom the Land Eſcheats, ſhall be charged with the Uſe, though he had no notice of the Uſe, becauſe it was chargeable in the hands of his Tenant, and he ſhall take it with all their charge. And beſides, the Lord was no purchaſor for valuable conſideration, and therefore not within the Proviſo.

Feoffee makes a Feoffment of a Cha. Uſe, to one that hath notice, the Land is chargeable with the Uſe.

If the Feoffee to a Charitable Uſe, makes a Feoffment to another, which hath no notice of the Uſe, and for a valuable conſideration upon condition; and after the Purchaſor makes a Leaſe back again to his Feoffee's, for a Releaſe of the Condition: In this caſe, though the Land was diſcharged in the hands of the Purchaſor; yet the Leaſe ſhall be charged by Decree for the Uſe, becauſe the Land is come again into the hands of the Feoffee; which was the perſon truſted with the Uſe; and therefore cannot clear the Land from the Uſe, nor free himſelf from the Truſt by any Conveyance, or means, how many ſoever they be.

A Diſſeiſor makes a Feoffment to a Cha. Uſe, and Leaſeth afterwards to the Diſſeiſee, who hath notice, this Leaſe ſhall not be impeached by Decree.

If a Diſſeiſor make a Feoffment to a Charitable Uſe, and after makes a Leaſe unto the Diſſeiſee, who hath notice of the Uſe, and the conſideration is for a releaſe to the Diſſeiſor; this Leaſe ſhall not be impeached by Decree, though the Leaſee had notice of the Uſe, becauſe it was the ſtrength, and cauſe of the Uſe it ſelf.

A Purchaſor makes a Feoffment, with warranty, to one that hath notice, the Feoffee ſhall not recover in value.

A Purchaſor having notice of the Uſe, makes a Feoffment, with warranty, for valuable conſideration, to another that hath notice, the Land is evict by Decree by the Commiſsioners; the Feoffee ſhall not recover in value, by reaſon of the warranty, becauſe the cauſe of Eviction is the notice of the Feoffee, which is no Title paramount to the Feoffment, and therefore the warranty extends not unto it.

Grantee of a Rent, purchaſes of a Tenant, who hath no notice, parcel of the Land. The reſt of the Tenants muſt pay their Rent. No extinguiſhment lies in the caſe.

The Grantee of a Rent to a Charitable Uſe, purchaſes Parcel of the Lands of a Tenant, which hath no notice of the Uſe; the reſidue of the Tenants ſhall be forced to pay the Rent, and no extinguiſhment in this caſe.

Two Joynt-Tenants, one hath notice, he ſhall be charged with the whole.

If two Joynt-Tenants of Lands out of which a Rent given to a Charitable Uſe, is iſſuing, purchaſe the Rent, and one of them hath notice of the Uſe, he ſhall be charged with the whole; but if he dye, the other which had no notice

notice, ſurviving, ſhall be charged but for a Moity.

If he dies, the Survivor with a Moity only.

If a Rent given to a Charitable Vſe, be purchaſed by one that hath no notice of the Uſe, and from him it deſcends to the Tenant of the Land, which hath notice, it ſhall be extinguiſhed, notwithſtanding the notice, becauſe he comes to it by him, which had the Rent diſcharged of the Uſe

Rent given, be purchaſed by one that had no notice, deſcends to a Tenant that had notice. The Rent is extinguiſhed.

A Purchaſor of a Leaſe having notice of the Uſe, deviſeth the term to one, which hath no notice, upon condition to pay money for it, the notice of the Teſtator, ſhall bind the Executor. And if an Executor having notice of the Uſe, aſſent to the Legacy, it is a devaſtavit, and he ſhall be charged with his own Goods, becauſe he might have pleaded the Gift to the Uſe in the Spiritual Court, if he had been ſued for the Legacy, and if the Judges had not allowed the allegation, he might have ſued a Prohibition.

Notice of the Teſtator, ſhall bind the Executor. An Executor aſſents to a Legacy, it is a *Devaſtavit*, and his own Goods are chargeable.

A. Purchaſes Land given to an Uſe to himſelf for years, the Remainder to B. for life, the Remainder to C. in Fee, and A. pays the Money, which was the Conſideration; thoſe only which have notice, ſhall be charged, becauſe the conſideration being Money, it is valuable for every ſale; but if the conſideration had been mixt, as Marriage and Money; it were otherwiſe, for all ſhall be charged, by the notice of one.

Upon conſideration of Money, thoſe only ſhall be charged, that had notice. If the Conſideration be mixt, as Marriage, and Money, the Law is otherwiſe. For then all ſhall be charged by the notice of one.

If a Man and a Woman being an Infant, having notice of the Uſe, purchaſe the Land before Marriage, with the Money of the Wife, to them and the Heirs of the Husband, for a Joynture for the Wife; in this caſe they ſhall both be charged, by reaſon of their notice. And the Infancy of the Woman ſhall not give her any priviledge, becauſe ſhe is a Purchaſor, which is her own Act; And it ſeems this Joynture ſhall barr her of her Dower, though it be evicted by Decree, becauſe the cauſe of the eviction was her own notice.

A Man and a Woman being an Infant, having notice intermarry and purchaſe, &c. they are both chargeable with the Uſe. Infancy will not give her priviledge, becauſe a Purchaſor and this Joynture ſhall barr her of her Dower.

But if the Husband purchaſed Land, having notice of the Uſe, and then, after Marriage, made Joynture to his Wife; in this caſe, the Wife ſhall be bound, by the notice of her Husband; yet if the Joynture be evicted by Decree of the Commiſsioners, the Woman ſhall be endowed of the reſt of her Husbands Land; for this is an eviction within the Equity of the Statute, 27 H. 8. Cap. 10. of Joyntures; for a former Statute may be conſtrued in Equity by a latter.

The Wife ſhall be bound by the notice of her Husband. After Eviction, ſhe ſhall be endowed of the reſt of her Husbands Eſtate For this is Equity within 27 *H.* 8. A former Statute may be conſtrued in Equity by a latter.

A Man having notice, marries a Woman which had purchaſed the Land, having no notice of the Uſe; ſhe dies, and he is Tenant by the Courteſie: his notice ſhall not charge him, becauſe he comes by courſe of Law to an Eſtate, which was diſcharged; and he was no party truſted.

A Man having notice, marries a Woman purchaſe, that had no notice. His notice ſhall not charge him, for he was no party truſted.

Two

Two Joynt-Tenants, one an Alien, and dies, and an Office is found. The King ſhall have a Moiety, becauſe his Title is Paramont.

Two Joynt-Purchaſors of Land, one of them hath notice, if he ſurbibe the whole ſhall be charged; if the other out-live him that had notice, yet he ſhall be charged for a Moity, becauſe he is in by ſurbiborſhip, and the Uſe was paramount the Joynture. As if two Joynt-Tenants be, whereof one is an Alien, and he dies, and then an Office is found, the King ſhall have a Moity, becauſe the other was in by Surbiborſhip, and the Kings Title was Paramount.

Iſſue of the Tenant in Tail, with remainders over, ſhall be charged by the notice of the Tenant in Tail, becauſe he is remitted to the Eſtate Tail, which was charged with the uſe.

Tenant in Tail, Purchaſor, having notice, Enfeoffs a Stranger, having no notice of the Uſe; the Feoffee infeoffs the Iſſue of Tenant in Tail, who alſo hath no notice; the Tenant in Tail dies, now the Iſſue ſhall be charged, becauſe he is remitted to the Eſtate Tail, which was charged with the Uſe.

LAW LIBRARY

Upon

Upon the Second Part of the Sixth Diviſion.

VAluable conſideration of Land or Money.

He made ſeven Concluſions.

1. A mixt Conſideration, though it were good upon other Conveyances, yet it is no valuable Conſideration within the intent of this Proviſo. As if the Purchaſe be in conſideration of Money, and a Marriage, or Money and natural Affection; becauſe there ſhall be intended, that there is Fraud in Affection, and the mixture of Money, is added but for a colour.

Valuable Conſideration.
Mixt Conſiderations, No valuable Conſideration within the Proviſo of this Statute.

2. If a valuable Conſideration be coupled with another, that is unvaluable, and void. (As if it be for Money, and in conſideration of antient Amity, or ſuch like) becauſe the whole Conſideration, reſts upon Money, which is valuable and good, the mixture of the other ſhall not marr the former. Utile per inutile non vitiatur.

If a valuable Conſideration mixt with another that is not ſo, the mixture ſhall not hurt the former *Utile per inutile non vitiatur.*

3. The Money or Land are not regarded, if either the Purchaſe be undervalued more than halfe the very worth of the thing, as if 20 l. be paid for that which was worth 30 l. or if there be Fraud in the payment, as if the Money were paid, and preſently repaid, or Promiſe and Truſt given of repayment, (for ſuch things are averrable) or if the Fraud be apparent, as if the ſale be to a Servant, a Couſin, or a Brother, it is Fraud by common Intendment of Truſt and Confidente in ſuch perſons.

A Purchaſe undervalued.
If Purchaſe-Money be paid, and preſently repaid, or promiſe taken for repayment.
If the ſale be to Servant, Couſen, Brother; all thoſe are Frauds within this Act.

4. By the name of Money, are intended all ſuch things as are of the nature; as a releaſe of a Debt, or of Arrearages of Rent, or of the value of a Wards Marriage; but not of Money due, as Marriage-Money, becauſe Marriage it ſelf is no valuable conſideration for doubt of Fraud in Affection, But a Releaſe of a Covenant when it is broken, or of a Debt, which an Infant owes for his Dyet, are conſiderations within the intent of the word Money. So is Plate, of a known weight; But neither Jewels, nor matters of Pleaſure (though Money be paid for them) are within the meaning of conſideration for Money.

By Conſideration of money, are intended all things; as a Releaſe of a Debt, of Arrearages of Rent, Value of a Wards Marriage, Releaſe of a Covenant broken, of a debt due by an Infant; Plate of known weight, are within the meaning of conſideration for Money. But Marriage-Money, Jewels, and things of pleaſure are not.

5. Land. This word extends its ſelf to all things that have their dependencies upon Land, as Rents, Leaſes, Extents, Wardſhip, Titles of Entry for Condition broken, Forfeitures, &c. Commons, &c. forfeiture of Marriage, &c. But extinguiſhments of poſsibilities are not.

If the Purchaſe be for 110 l. which 10 l. is for Uſe, the conſideration is for Money and Uſury, and ſo mixt, that the Uſury ſhall make all void.

Land extends to all things, that depends upon Land, as Rents, Leaſes, Extents, Wardſhip, Titles of Entry for Condition broken. Forfeitures, Commons, &c, forfeitures of Marriage. But extinguiſhment of poſſibilities, are not within this Proviſo.
If the Conſideration be for Money and Uſury mixt, the Uſury makes all void.

Commissioners may examine into the truth of a consideration expressed, and add to them: or falsify them, though the party be Estopped by his Deed.

6. What consideration soever be expressed in the Conveyance, yet the Commissioners may examine the truth of the matter, and add other unto them, or falsify them notwithstanding the party be estopped by his Deed to shew the contrary, that is there contained.

If the Consideration be exemptory, and not performed, it is out of this Proviso, and Commissioners may decree against a Purchasor.

7. If the consideration be Executory, and not performed, it is not within the meaning of this Proviso; and the Commissioners before the performance, may make a Decree against the Purchasor,

But if part be executed, and part executory, as a Fine and Rent, or a sum in gross, whereof is paid, and a day given for the residue, in these cases the Commissioners are concluded, and cannot Decree.

But if part be executed, and part executory, or a sum in gross, &c. in part paid, the Commissioners are concluded, and cannot decree.

A Rack-Rent is no valuable consideration, but a Fine for a Lease is.

If the Feoffee to an Use make a Lease for an improved Rent to one that hath no notice of the Use, the rack Rent is no valuable consideration, to make him a Purchasor within meaning of the Proviso, but a Fine for the Lease is a valuable consideration.

A Feoffment to pay Debts, is no valuable consideration within the Proviso of this Act.

A Feoffment to pay the debts of the Feoffor, with the Profits, is no valuable consideration within this Proviso.

Upon

Upon the Third Part of the Sixth Diviſion.

Without Fraud or Covin.

IF Land be given upon condition to maintain a Cha. Uſe, and the Feoffee, and the Heir of the Feoffor agree, that the Uſe ſhall not be imployed, and that the Heir ſhall enter for Condition broken, and then make an abſolute Feoffment again to him, this agreement is Fraud within this Statute.

Private agreement, that the Uſe ſhall not be imployed according to the Donors Gift, is fraud.

A Feoffment made unto the Heir in Tail, by the diſcontinuance to a Cha. Uſe, to the intent the Heir may be remitted to deſtroy the Uſe, it is Fraud.

A Feoffment made by the diſcontinuance, to the end, the Heir may be remitted, to deſtroy the Cha. Uſe, is fraud.

A makes a Feoffment to C. of Lands chargeable with an Uſe, whereof C. hath notice, and this made with a power of Revocation. C. makes an exchange with B. who hath no notice of the Conſideration; and after A. releaſes the power of Revocation, this is Fraud, becauſe it would overthrow the Uſe.

A Feoffment made with power of Revocation, by one that hath notice, and after releaſeth the power, is fraud.

The Husband makes a Joynture to his Wife before Marriage, and after makes her another Joynture of Lands given to an Uſe; upon condition, that ſhe ſhall refuſe the former; if ſhe takes the latter, ſhe ſhall be chargeable, but this is no Fraud, but ſhe is bound by her own acceptance.

A Joynture made of Lands given to a Cha. Uſe, upon condition to releaſe a former Joynture, is chargeable with the Charity, if the latter be accepted: but it is no fraud within this Act.

The Father, in conſideration of natural affection, Enfeoff his Son of certain Lands, and after, upon condition, that the Son ſhall Re-enfeoff him of that former Land, he gives him other Land which is chargeable with an Uſe, whereof the Son hath no notice; this is Fraud, becauſe the Father had notice; for at the Common Law, where the Father which held by Knights ſervice Infeoff'd his Heir within age, it was Fraud apparent.

Lands given to a Son chargeable with a Cha. Uſe, of which the Son hath no notice, inſtead of Lands, of which the Son was before ſeized, is fraud in the Father.

If a Rent that was granted to deceive a Purchaſor, be granted to another for Land, which was given to an Uſe, though he had no notice of the Uſe, yet the Land is decreeable, becauſe ſuch a Rent was no good conſideration.

Rent given to deceive a Purchaſor, which was given to a Cha. Uſe, is decreeable, for, Rent is no good conſideration.

If the Feoffee to an Uſe, exchange that Land with an Accomptant of the Kings, who hath no notice of the Uſe, and both the parcels are ſold to ſatisfy the Kings debt; the Commiſsioners may decree for the Land given to the Uſe, becauſe there was Fraud in the Feoffee, to gain it to an Accomptant of the King, and the Land never came to the King, for the King hath not the Land, but only a power to ſell the Land given by the Statute 13 Eliz. cap. 4.

If Land, &c. be exchanged with an Accomptant to the King, and no notice, and the Land be ſold, Commiſſioners may decree the whole Land, for the gaining to the King was fraud. The King hath not the Land, but a power to ſell it, by 13 Eliz. cap. 4.

Lessee to a Cha. Use, makes a Feoffment to one that hath no notice. Lessor having notice, enters, the Lease is decreeable for the apparent Fraud.

Lessee to a Charitable Use, makes a Feoffment for consideration, to one that hath no notice; the Lessor, or he in the Reversion, having notice, enters for a forfeiture, the Lease is Decreable for the Fraud apparent.

Goods sold in a Market, and bought again by the seller is Fraud, if he had notice of the Use.

Goods given to a Charitable Use, are sold in a Market, if the party buy them again, they are decreable; so is he chargeable that bought them, if he had notice of the Use.

Goods given to a Cha. Use pass by a general Deed of Gift, is fraud.

One that hath Goods given to a Cha. Use, makes a general Deed of Gift of all his Goods, they shall pass with the other, by the general words, and yet they that were given to the Use, are decreable for the Fraud implied in the generality.

Goods &c. given to save another harmless, at undervalue, is fraud without notice of the Cha. Use.

Goods given to an Use, are given to another to save him harmless of a Debt, undervalue, he shall be charged for the overplus, without notice.

A Sale under the moity of the value, is fraud, But being sold over to another, upon good consideration, the Fraud is purged.

A Sale under the moity of the value, is fraudulent, and decreable. But if one purchase Lands or Goods, under half the value, and sell them over to another, upon good consideration, bona fide, the Fraud is purged.

A Gift to maintain one for his life, the residue of the profits to a Cha. Use, is fraud *ab initio*. The Consideration is Executory.

The Feoffee or Donee to an Use, makes a Gift to one that hath no notice, to find, and maintain him during his life, and the residue of the Profits, to be given in Pios Usus this is a Fraud for all, because the consideration is Executory.

Upon the Fourth Part of the Sixth Division.

Notice.

The person that must have notice.

Concerning notice of the Use, which should make a man chargeable, notwithstanding any valuable consideration, be considered three circumstances.

1. The person to whom notice must be given.
2. The manner how it may be given.
3. The time when it ought to be given.

Notice is traversable.

Notice is a thing traversable, and to be collected by circumstances.

1. The person must have notice.

1. The Person which must have the notice, is the Purchasor, and the Purchasor is he which pays the Money.

A Purchasor is he that pays the Money. Notice to a Lessee in Remainder over, &c. is sufficient.

If an Estate be made to one for years, the remainder for Life, the remainder in Fee to others, if the Lessee pay the Money, his notice is sufficient.

So if Father or Son have notice, and the Father pays the Money; if the Son be named a Purchasor.

So if the Father or the Son have notice, where the Father pays the Money, it is sufficient, where the Son is named the Purchasor.

If Guardian of an Infant. Committee of an Ideot.

If the Guardian or Infant have notice, where the Infant is purchasor, it is sufficient. To the Committee of an Ideot

Ideot, for his Purchaſe, to the Husband, for the Eſtate of his Wife, to a Mans Factor, whom he puts in Truſt to purchaſe for him.

Husband for the Wives Eſtate. To the Factor of a Purchaſor.

To a Dean, Mayor, or other Head of a Body Politique, for their Purchaſe. For the head, as it hath the tongue to ſpeak, ſo hath it the ears to hear, for the reſt of the Body, and therefore notice to the head, is ſufficient for the reſt of the body Politique.

To a Dean, Mayor, &c. for the Body Politique, are all good notice.

2. The manner. Any general Information is ſufficient, as ſometimes the general name of the Land gives a competent notice: as if it be called the Church-Land, or the high-way-Land, or Hoſpital-Land, &c. the notice of ſuch a name gives an intimation of an Uſe.

2. To the manner of Notice. Any general information is ſufficient as Church-land, Highway-land, Hoſpital-Land, &c.

An Attorney which makes Livery and Seiſin upon a Feoffment, to a Charitable Uſe, hath ſufficient notice of the ſ Uſe ſ, ſo have the Witneſſes which hear the Deed read or a Will read, or the effect thereof declared.

An Attorney that makes Livery and Seiſin, hath thereby ſufficient notice. So have witneſſes which hear the Deed read, or the Effect declared.

A Scrivener which writes the Will of a Man that deviſes Land thereby, to repair Highways, though the Deviſor afterwards change the imployment to repair Churches, yet the Scrivener hath ſufficient notice of the Cha. Uſe, to exclude him from being a Purchaſor within the Proviſo.

A Scrivener which writes the Will for a Cha. Uſe, is thereby excluded from being a Purchaſor.

If a Copyholder ſurrender to another, to a Charitable Uſe, and this be preſented, all the Tenants and Suitors of the Manor, have thereby ſufficient notice, whether they were preſent or abſent from the Court; for every one is bound to be preſent by himſelfe or his Eſſoynor, who is his Attorney, and therefore at his peril, muſt take notice of all things done in that Court.

By ſurrender of a Copyholder, all other Tenants and Suitors, have ſufficient notice.

The notice of the imployment, is a ſufficient notice of the Gift, and therefore both the Churchwardens and Overſeers for the Poor, and ſuch as are preſent at their Accounts, have notice ſufficient of the Gift and Uſe.

Notice of the imployment, is good notice. Churchwardens and Overſeers of the Poor, and all preſent at their Accompts, have notice enough.

Notice given generally in the Church, is ſufficient for all the Pariſhioners, whether preſent or abſent, at the time it was given; for every one ought to be there preſent, or to enquire and know, what was done there.

Notice in the Church.

Notice in a Leet is ſufficient for all that owe ſuit to the Court; but neither Infants, Women, Clergy-men, or perſons above 60 years old, are bound by ſuch notice.

In a Leet.

The Copy of a Will read or declared, under the Seal of the Ordinary, is notice ſufficient, but not a Paper Copy.

Copy of a Will under the Ordinaries Seal.

If a Client bring a Writing to a Counſellor, and the Counſellor tell him the Land is given to a Charitable Uſe, this notice ſhall bind the Client, but not the Counſellor.

A Client being told by his Counſel, of the Cha. Uſe, binds the Client, not the Counſel.

The

The Reading of an Inquiſition, or Depoſition, are all good notice.

The reading of an Inquiſition, or a Depoſition, taken concerning the Uſe, binds thoſe which hear it.

The time of Notice, muſt be before the Purchaſe

3. The time of the notice muſt be before the Purchaſe.

If a Leaſe be made for years, upon condition to have the Land in Fee, and this was Land given to a Cha. Uſe, and then before the performance of the Condition, the Leſſee hath notice of the Uſe; if after he perform the Condition, the term now ſhall be chargeable; but if he perform not the condition, he ſhall hold his term without impeachment of the Commiſsioners Decree, becauſe it was a purchaſe before notice.

Notice before Livery and Seiſin.

Before Attornment upon a Grant.

Notice before Livery and Seiſin upon a Feoffment.

Before Attornment upon a Grant of a Rent or a Reverſion, is time enough to bind the Feoffee, and the Grantee.

To the Obligor, before payment of his Money.

So is notice to the Obligor before payment of his Money,

Before a Deed delivered, are time enough.

If the Bond were not taken for the payment of a reſidue of the ſum, whereof part was paid in hand for the purchaſe. So is it, if it be before a Deed be delivered, though it were ſealed firſt.

Notice before Enrollment of a Deed, doth not bind. The bargain was good before. Inrollment is only a ceremony.

If Land be bargained, and ſold by Deed, and the party that bought it, have notice before the Inrollment of the Deed, yet he is not bound by that notice, for the bargain was perfect before, and the inrollment is but a ceremony, added by a Statute.

Notice to the right Heir of J. S. is not good for the incertainty.

If a Remainder of Land given be limited to the right heir of J. S. or to his eldeſt Son, which he ſhall have at the time of his death; notice cannot be given to any man during the life of J. S. for the incertainty, what perſon ſhall be his right heir, or his eldeſt Son, at the time of his death.

Upon

Upon the First Part of the Seventh Division.

The Commissioners, or any four, or more of them, shall and may make Decrees and Orders, for recompence to be made by any person or persons, who being put in trust, or having notice of the Charitable Use, that hath or shall break the same Trust, or Defraud the same Uses by any Conveyance, Gift, Grant, Lease, Demise, Release or Conversion whatsoever; and against the Heirs, Executors, and Administrators of him, them, or any of them, having Assetts in Law or Equity, so far as the same Assetts will extend. *Upon the 7 Branch.*

And hereupon I will observe;

1. What shall be a breaking of Trust, or defrauding of Charity within this Act. *Three Points.*
2. What Heir, Executor, or Administrator shall be chargeable with recompence, or defrauding of Uses by his Ancestors, Testators, or Intestate.
3. What shall be Assetts in Law or Equity, to make recompence according to this Act, *ut* in *fol.* 9, 6, *fol.* 23, 24, 25, 26.

If Fees in Trust to a Charitable Use, *&c. fol. 6. b.* to these words, *What an Inquisition*, and then begin at *fol.* with these words, *fol.* 24. *b. If a Man marry a Woman*; *&c.* and so as in *fol.* 25. 26. to the end. *Resolve, fol. 9. & fol. 23, 24, 25, 26.*

If a Man marry a Woman, to whom a Bond was made for a Charitable Use, , and the Husband releases the Bond, though he had no notice of the Use, yet this is a breach of Trust, and he shall render in recompence, because the notice of the Wife shall bind him. What a breach of Trust, and fraud within this Act. If a Husband release a Bond, given to a Wife for a Cha. Use, it is a breach of Trust.

But if an Obligation be made to a Woman, after coverture for a Charitable Use, and the Husband wave the Bond, he shall not make recompence, though he had notice of the Use. But if it were given after Coverture, and he wave the Bond, it is otherwise.

Lands are devised for Life, the Remainder in Fee to a Charitable Use. If he in the Remainder have notice, and wave the Remainder, this is a defrauding of the Use. (otherwise without notice.) Remainder in Fee hath notice, and waves the remainder, this is a fraud, otherwise it is without notice.

A Lease for Life is made, and the Remainder is limited to the right Heirs of J. S. for a Cha. Use: If Tenant for Life have notice of the Use, in remainder, and make a Feoffment, this is a defrauding of the Use, because the Use cannot consist without the Remainder, whereunto it was annexed, and which was destroyed by the Feoffment; and therefore he shall render recompence. A Use in remainder cannot consist, in that the remainder, to which it was annexed.

But

If Tenant in Tail ſuffer a common Recovery, this is no defrauding of the Uſe.

But if Tenant in Tail (the Remainder over being limited for a Cha. Uſe) ſuffer a common Recovery, this is no ſuch defrauding of the Uſe, though he had notice of the Uſe, as that he ſhall make any recompence, becauſe his Eſtate hath that priviledge annexed by Law, that he may cut off the Remainder lawfully.

Morgagee having notice, is chargeable with the Uſe, if notice; otherwiſe, the Heir of the Mortgagee.

The Mortgagee deviſes, that if the Money be paid, it ſhall be imployed to a Cha. Uſe; and if the Money be not paid at the day; then the Land ſhall be given to a Cha. Uſe, the Heir of the Mortgagee enſeoffs the Mortgage before the day of payment; if the Mortgager had notice of the Uſe, he ſhall be charged for the Money, but if he had no notice, then the Heir of the Mortgagee ſhall be charged with recompence for the Land, for he brake the Truſt.

Executors aſſent to a Legacy, are chargeable out of the Teſtators Eſtate, if Aſſets, if not, out of their own, for recompenſe.

But if the Deviſee had notice, it is otherwiſe.

The termer to an Uſe, deviſes it to an Eſtranger, which hath no notice; upon condition, to pay 20l. per ann. the Executors which have notice of the Uſe receive the 20l., and ſo aſſent to the Legacy, they ſhall be charged for recompence of the Goods of the Teſtator, if they have Aſſetts, if not, of their own Goods, for they did finiſh the Frand, which was commenced by their Teſtator; but if the Deviſee had notice, there ſhall be no recompence for the leaſe, becauſe, in that caſe, the Leaſe it ſelf is to be decreed for the Uſe.

Diſſeiſee Enters, and Enfeoffs the Grantee of the Rent. The Uſe is deſtroyed without recompence,

If a Diſſeiſor grant a Rent to a Cha. Uſe, and the Diſſeiſee enters and Enfeoffs the Grantee of the Rent, the Uſe is deſtroyed; but without recompence, becauſe no fraud.

If a Revertioner releaſe to a Feoffee, the Feoffee ſhall render in recompence.

But if Tenant, for life, grant a Rent-charge to an Uſe, and after enfeoff the Grantee, and then he, in the Reverſion, releaſe to the Feoffee, the Feoffee ſhall render in recompence, becauſe the Feoffment was fraudulent, and was not lawfully defeated.

Notice ſhall deſcend and bind the Heir.

A notice ſhall deſcend, and bind the Heir to recompence.

Becauſe his Father had notice.

So an Executor by notice to the Teſtator.

The Father holds Land to an Uſe, and dies, the Heir, having no notice, ſells the Land to another, which likewiſe hath no notice of the Uſe: yet the Heir ſhall render in recompence, becauſe his Father had notice of the Uſe; ſo ſhall the Executors, for the notice of their Teſtator, be anſwerable in recompence, if they have Aſſetts.

A Teſtator having Goods to a Charitable Uſe, makes a Feme-Covert, his Executrix; her Husband, having no notice of the Uſe, gives them by his Will, or otherwiſe converts them, to his own uſe, the Wife only ſhall be charged, and not the Executors of the Husband, unleſs they have notice of the Uſe; and then it is in the Election of the Commiſsioners, to charge either the Woman, or the Executors of her Husband.

A Teſtator hath Goods to a Cha. Uſe, gives them by Will to a Feme-Covert, or converts them to his own uſe; the Wife only ſhall be charged, unleſs the Executors had notice; it is then, in the Commiſſioners election to charge either.

If

If a man wrongfully, by Trespass, take Goods which were given to a Charitable Use, and sell them in a Market, the Trespassor shall be charged with recompence for his wrong; but if the party, out of whose possession they were taken, recover in an Action of Trespass, against the Trespassor, before recompence made, he is not to be charged with recompence, but the party which recovered, must be charged; yet if the Trespassor be charged, the Commissioners by their Decree may discharge them against the Proprietory, and he may plead the Decree in Barr.

Trespasser is chargeable with recompence for his wrong.

But if recovery be made before recompence, upon an action, the Recoverer is chargeable.

An Administrator durante minori ætate, without notice of the Use, implays the Goods to the benefit of the Infant: the Goods of the Infant shall make recompence: but if the Administrator waste the Goods, he shall be charged with recompence of his own Goods; like Law of a Guardian in Soccage. or,

Goods imployed to the benefit of an Infant, by an Administrator, the Infantis to allow.

But if the Administrators commit waste, it is otherwise.

The like Law of a Guardian in Soccage.

If a Rent for a Charitable Use be issuing out of the Lands of an Ideot, and the King remits him over, the Committee shall not be charged, though he have notice of the Use, until it be allowed, upon suit by Petition, or by Bill of Complaint, because he comes under the Title of the King, who hath the custody of an Ideot to his own Use.

The King remits an Ideot, the Committee not chargeable.

But if such a Rent be issuing out of the Lands of a Lunatique, the Committees shall be charged with the Rent, without any Suit for allowance, because they have the custody of the Lunatick, for the benefit of the Lunatick, and the King is not entituled to the Profits, but to the disposing of the Custody.

But for a Rent out of the Lands of an Ideot, it is otherwise.

A man having notice of the Use, purchases the Land in another mans name, which hath no notice, and he, in whose name the purchase was made, sells it to another, which hath no notice, he, whose name was used, is a party trusted; and shall make recompence.

Purchasor in another mans name, sells over, &c. he whose name was used, shall make recompence

An Accomptant to the King having notice of the Use, purchases in anothers name, who hath no notice of the Use; the King sells the Land to one which hath no notice, the Accomptant shall be charged in this case; but if the Bargainee of the King had notice, he should be charged.

An Accomptant purchaseth in anothers name, &c. the Accomptant is chargeable.

But if Bargainee of the King had notice, it is otherwise.

A Bankrupt hath Lands given to an Use, the Commissioners sell it to a Creditor that hath no notice of the Use; in this case the Bankrupt must be charged, and though the Commissioners have notice of the Use, and sell it, yet they shall never be charged; because they do but execute an authority; but if the Bankrupt dye without Heir, so that there remains no colour of recompence to be made by him, then the Commissioners upon this

A Bankrupts Lands, &c. are sold to a Creditor that hath not notice; The Bankrupt must be charged.

If the Bankrupt dye without Heir, the Commissioners may charge the Land with the Use.

A Cha. Uſe, is not to be barred, without actual recompence.

Statute, may charge the Land with the Uſe, in the hands of the Creditors; &c. for a Charitable Uſe ſhall not be barred without actual recompence, or a party which ſhould render, if he were able.

The firſt Purchaſor, and not he whoſe name is uſed, ſhall be charged with recompence in this caſe.

One which hath notice of an Uſe, purchaſeth the Land in the name of another that hath no notice, and after the Purchaſor requeſts him, whoſe name he uſed, to make a Feoffment to another, for good conſideration, the party having no notice of the Uſe; in this Caſe the firſt Purchaſor, and not he whoſe name was uſed, ſhall be charged with recompence.

The Daughter without notice ſhall be charged with ſo much as the Land was worth, at the time of the Purchaſe, with notice, ſhe is chargeable with the whole recompence.

The Father being Feoffé to an Uſe, Mortgages the Land to one which hath no notice, and dyes, having iſſue only one Daughter, and leaves his Wife with Child; the Daughter redeems the Land by payment of the Money, then a Son is born, then the Daughter having no notice of the Uſe, ſells the Land to one which hath no notice, the Daughter without notice, ſhall be charged with ſo much as the Land was worth, more than ſhe paid for it; and if ſhe had notice, ſhe ſhall be charged for the whole recompence, though ſhe is not Heir to her Father.

Daughter ſhall make recompence out of her own Land.

A Man having knowledge of the Uſe purchaſes the Land to his Wife, the remainder to his own right Heirs, and dies, having iſſue only a Daughter; and ſhe, after the death of his wife, having no notice of the Uſe, ſells the Land to another, which hath no notice of it; the Daughter ſhall make recompence for the Land, of her own Land, becauſe ſhe is no purchaſor within this Statute, but comes in privity of the notice, as Heir to her Father.

Feoffee releaſes to the Heir of the Diſſeiſor, the Heir ſhall not be charged with recompence, but the Feoffee.

The Feoffé to an Uſe is diſſeiſed, the Diſſeiſor dies ſeized, and then the Feoffé, in conſideration of Money, releaſes to the Heir of the Diſſeiſor, who had no notice of the Uſe, the Heir ſhall not be charged, but the Feoffé brake the Truſt, and he muſt make the recompence.

Anceſtor collateral releaſeth with Warranty, his Executors are chargeable; unleſs he leave Aſſets. then the Heir. If Aſſets be Burrow-Engliſh, then the Land, and the Executors of him that releaſed, are chargeable.

Tenant for life, the remainder to A. in Fee, being charged with an Uſe, the Tenant for life makes a Feoffment for valuable conſideration: an Anceſtor collateral to A. releaſes, with warranty; and dies, although the Anceſtor had no notice, nor was put in Truſt with the Land; yet, for the Fraud, his Executors are chargeable; but if he leave Aſſetts, the Heir ſhall be charged, if not, then his Executors are to be charged; And if the Aſſetts deſcend to Burrow-Engliſh, then that Land, and the Executors of him that releaſed, ſhall be charged.

Executors ſell Land to the Teſtators Heir.

A Purchaſor having notice of the Uſe, deviſes, that his Executors ſhall ſell the Land; the Executors having no notice of the Uſe, ſell the Land to the Heir of the Teſtator,

Teſtator, who likewiſe is ignorant of the Uſe, the Executors ſhall be charged for recompence de bonis Teſtatoris, and the Heir for the Land, becauſe the Notice deſcended.

The Executors, de bonis Teſtatoris, the Heir is chargeable for the Land.

All Co-parceners, at the Common Law, and Heirs by Cuſtom of Gavel-kind, and the Heir in Burrow-English, ſhall be bound as Heirs, to make recompence with their Land, deſcended to that kind. But the Heir in Tail, is not to make recompence with ſuch Land deſcended, becauſe it is not Aſſetts, for he hath it per formam doni, as much as by deſcent, and yet,

All co-parceners at Common-Law, Heirs by cuſtom of Gavel-kind, Heirs in Burrow-English, are bound to make recompence with Lands deſcended. Heirs in Truſt are not.

If the Feoffee to an Uſe ſell that Land, and after purchaſeth other Land in Tail, which deſcends to his iſſue; the Heir in Tail, in this caſe, ſhall be bound to make recompence with that Land intailed, becauſe it ſhall be intended that his Father purchaſed that Land, with the money which he had for his fraudulent ſale of the other Land in Uſe.

Heir in Tail of him that leaves Land to deſcend, that was gained by fraudulent purchaſe, is chargeable with recompence.

A defrauder of an Uſe purchaſes Land in another mans name, and dies; his Heir procures him, in whoſe name it was purchaſed, to ſell the Land to another, and the Heir receives the Money; this money in the hands of the Heir, ſhall be Aſſetts in Equity, to make recompence for his Fathers fraud.

Money in the hands of an Heir, whoſe Anceſtor was a defrauder.

Aſſetts in Equity.

So if the party, whoſe name was uſed, infeoffe the heir of him which put him in Truſt; that Land ſhall be Aſſetts in Equity, becauſe he comes in upon a Truſt deſcended.

So the Heir of him which puts another in Truſt, his Lands are Aſſetts in Equity.

Land is given to a Man, and his Heirs, for the life of J. S. though the Heir in this Caſe, be in, as a ſpecial Occupant, yet this Land ſhall be Aſſetts to make recompence, as Heir to a defraudet of an Uſe.

The Lands of an Heir, in as a ſpecial Occupant.

A defrauder ſells a Term with a power of Revocation, this power of Revocation in the Executors, is Aſſetts in Equity, to make recompence; becauſe they may ſell without Revocation, and then the Money will be Aſſetts.

Aſſetts in Equity.

A power of Revocation.

A Copyhold deſcended deſcended, is Aſſetts, in Equity, ſo is an Eſtate by Eſtoppel.

Aſſetts in Equity. A Copyhold deſcended, and an Eſtate by Eſtoppel.

If an Executor take money to forfeit a Term, the Term ſhall be Aſſetts. So if the Heir aſſent to a forfeiture of Land deſcended, the Land ſhall be Aſſetts, for which the Heir muſt yield recompence; the remainder to the right Heirs of J. S. (if J. S. was a defrauder of an Uſe) is Aſſetts to make recompence.

Forfeiture of a Term, makes the Term Aſſetts.

Remainder of J. S. a Frauder, is Aſſetts.

Where Executors or Adminiſtrators may be charged with recompence, after Adminiſtration committed; in ſuch Caſes before Adminiſtration committed, the Ordinary, by Equity, may be charged by Equity upon this Statute.

Equity. The Ordinary may be charged.

Aſſetts

Assetts in Equity must satisfy Charitable Uses first. Equity of this Statute above the Equity of Chancery.

Assetts in Equity must satisfy Charitable Uses, before Debts or Legacies; because Assetts in Equity are disposable, by this Statute, which ordains them to make recompence, and the Equity of the Statute, is above the Equity of the Chancery.

Assetts in Law, must satisfy debts, &c. first.

But Assetts in Law, must satisfy Debts, before Charity; because the Common-Law must order their disposition.

Charity before Legacies.

Yet Charity must be preferred before Legacies, in disposition of Assetts in Law.

FINIS.

LAW LIBRARY

THE TABLE.

A.

ABate of Money, *chap.* 6 *p.* 74. Sir *Thomas Middletons* Caſe, 1590 allowed and decreed

Act of 43 *Eliz.* to what it doth, and to what things it doth not extend, *chap.* 1. from *p.* 1 to *p.* 4.

Things in Action, *cap.* 6. *p.* 72. *Mich.* 12 *Jacobi*, *p.* 79. Inhabitants of *Sherborne*, 3 *Car.* 1.

Adminiſtrators, when and how chargable with *a Charitable Uſe*, *p.* 3. *vide* the Act.

To Adnul in whom, *vide* the Act, *cap.* 1 *p.* 4. and *chap.* 6 *p.* 84. Poor of *Chelmſford*, and Sir *Henry Mildmay*, 1649 *chap.* 6 *p.* 62. *Windſor* and *Hiltons* Caſe, *Mich.* 1626.

Appeals to whom, *chap.* 1. *vide* the Act, and *chap.* 6 *p.* 62. *Windſor* and *Hiltons* Caſe, and ſo to *p.* 95. *Mich.* 44. *Eliz.*

Eaſt Greneſteds Caſe, *chap.* 6 *p.* 64. Caſe 4 16 *March* 4 *Car.* Inhabitants of *Eltham*, againſt *Warreyn*, *chap.* 6. *p.* 67. 10 *Car. Sutton Colfeilds* Caſe, *Hill.* 11 *Car. chap.* 6 *p.* 68. *Hynſhaw* and *Pydwer*, and the Mayor of *Morpeth*, *chap* 6 *p.* 69.

Aged *cap.* 1 *p.* 1. 5. within this Act for Relief.

Who may reverſe Decrees 67.

Alter *cap.* 1 *p.* 4. *p.* 85. Poor of *Chelmſford*, and Sir *Henry Mildmay*, 1649 *cap.* 6. *p.* 62. *Windſor* and *Hiltons* Caſe.

Amends by whom to be made, and for what, *cap.* 7 *p.* 120.

Annuities, *cap.* 1 *p.* 2, 3. 94. 44 *Eliz.* chargeable with a Charitable Uſe.

Appointments what good, *chap.* 1 *p.* 1, 2. *chap.* 7. *p.* 105. *ſect.* 1 *chap.* 6 *p.* 79. Inhabitants of *Sherborn*, 3 *Car.* 1. 1626.

Arrears, *cap.* 6 *p.* 76. *Bernard Hydes* Caſe.

Aſſets in Law or Equity, when chargeable with a Charitable Uſe, *cap* 1 *p.* 3, 6.

Aſſignment what good, *cap.* 1 *p.* 2.

Attachment, *Cap.* 6 *p.* 76. *Rivets* Caſe, 15 *Jacobi*,

Lands by Attainder, come to the Queen, *cap.* 1 *p.* 3.

Atturney General, *cap.* 1 *p.* 34.

Attornment, *cap.* 1 *p.* 6. *chap.* 6 *p.* 85. Chriſts Hoſpital and *Haws.*

Authority of Lord Chancellors, *chap.* 1 *p.* 4. to grant Commiſſions, and to whom, *chap* 6 *p.* 62. to alter, admit, or confirme Decrees.

B.

BEhavior, *chap.* 1 *p.* 2.

Bills of Reviter, when to be admited and in what Caſes, *cap.* 6 *p.* 82. *Penſtred* againſt *Payer*, *Trin.* 15 *Car.* 1. *cap.* 6. *p.* 62. *Windſor* and *Hiltons* Caſe, *Mich.* 1626. *chap.* 7 *p.* 128. *ſect.* 6.

Bridges, *cap.* 1 *p.* 1. *vide* the Act 43 *Eliz.* are within this Act.

Biſhops muſt be in every Commiſſion, *cap.* 1 *p.* 2. and *cap.* Caſe 2 *Mich.* 44 *Eliz.*

C.

CAmbridge, *cap.* 1 *p.* 2, 3. Act doth not extend to it.

Cauſeways, *cap.* 1 *p.* 1. are within this Statute.

Captives it doth extend to, *cap.* 1 *p.* 1.

Capite Land chargeable, with a Charitable Uſe, *cap.* 6 *p.* 84. Chriſts Hoſpital and Haws.

Certificates to be made under Seals of four Commiſſioners, *&c. cap.* 1 *p.* 4. 6 *chap.* 7 *p.* 126. *ſect.* 4. into the Chancery, *cap.* 1 *p.* 4. *&c. cap.* 6. *p.* 126. *ſect.* 4.

Challenge who may have it, *cap* 1 *p.* 2 *cap.* 6 *p.* 65.

Chancellor to a Biſhop, to be of the Commiſſion, *cap.* 1 *p.* 2. *cap.* 6 *p.* 63. *Eſt Greeneſteds* Caſe, 9 *Car.* 1.

Lord Chancellors Power and Authority to grant Commiſſions, *cap.* 1 *p.* 2. 4. to

Relieve and Regulate miſimployments, *chap.* 7 *p.* 116 *ſect.* 4. to annul and reverſe Commiſſioners Decrees, *chap.* 7 *p.* 121. *ſect.* 6. and *chap.* 2 Caſe 2. *Eſt Greeneſteds* Caſe, and Caſe 4 of the poor of *Walthamſtowe*, *cap.* 7 *p.* 126, 127. to judge of Notice, *cap.* 7 *p.* 122. *Sect.* 4. to give remedy for Arrears, *chap.* 7 *p.* 125 *ſect.* 4 and *chap.* 6. Caſe 3 8. to record Certificates, *chap.* 7 *p.* 126. to Decree according to Donors intent, and to alter and confirm Decrees accordingly, *cap.* 7 *p.* 127. to give Coſts of Sute or not, *cap.* 7 *p.* 127. *ſect.* 6. to increaſe Coſts, *cap.* 6 *p.* 127. Caſe 5 Inhabitants of *Eltham* againſt *Warreyn*, *Mich.* 10 *Car.* 1. to make a defective Decree good, *chap.* 7. *ib.* & *cap.* 6. Caſe 20. *Eſt Greenſted*, againſt *Howard*, 8 and 10 *Car.* 1. to adnul, diminiſh, in part, alter, or enlarge a Decree, *cap.* 6 *p.* 85. Chriſts Hoſpital and *Hawes*, *chap.* 7 *p.* 127. *ſect.* 6.

What Charge goes with the Land, *cap.* 6 *p.* 70. *Woodford* Inhabitants, and *Parkhurſt Hill*, 14 *Car.* 1.

Chattels what, and how to be charged, *cap.* 1 *p.* 1, 2, 3.

Churches, *cap.* 1 *p.* 1, 2. a remainder to them good, *cap.* 6. *p.* 113. *ſect.* 2. & *chap.* 6 Caſe 26.

Churchwardens are to have notice of ſitting, *cap* 2 *p*, 9. Land given to them is good, *cap.* 7 *p.* 115. *Pennyman* againſt *Jenny*, 2 *Car. cap.* 7 *p.* 113. *ſect*, 2 *chap.* 6. Caſe 29.

Colledges out of this Act, *cap.* 1 *p.* 2, 3.

Commiſſion, and the form of it, *cap.* 2 *p.* 7. 8, 9. when made by fraud, and when legally, *cap.* 67, 75. *Riveits* Caſe, 15 *Jacobi*, and what to be done therein, *cap.* 7 *p.* 116, 117. *ſect.* 4.

Commiſſioners, and their office and power, *vide* the Act, *cap* 1 *p.* 3, 4, 5. to avoid an Eſtate, *cap.* 6 *p.* 63. Caſe 2 *Mich.* 44 *Eliz.* to order repair of houſes, *ib.* to make a Gift to a Corporation no Mortmain, *ib.* to enable Grantées, to Demiſe, to order out of their County, *ib. p.* 64. to order in ſeveral Counties, *chap.* 6 *p.* 64. *Eaſt Greeneſteds* Caſe, *Trin.* 9 *Car.* 1. to decree Rent extinguiſhed, to be revived, *ib.* to decree Money detcined, and damages for deteining it, *ib. p.* 67. Caſe 4 16. *March* 14 *Car.* 1. to order repair of Houſes, *cap.* 6 *p.* 67. *Eltham* Inhabitants againſt *Warreyn*, to give Coſts, *ib.* to make void a Leaſe, to make a Decree, though not preſent at the Inquiſition, *cap.* 6 *p.* 68. the Caſe of *Sutton Colfield*, to diſpoſe of Improvements, and increaſed valew of Land, *ib.* to reform breach of truſt in Viſitors and Truſtees, *ib.* and *chap.* 6 *p.* 69. *Hynſhaw* and *Fydwer*, and the Mayor of *Morpeth*, 5 *Car.* 1. to decree the Arrearages of improved Rent, *cap.* 6 *p.* 71. *Kenington Haſtings* 9 *Jacobi*, to order upon a deviſe, *ib.* to order increaſe of Stipends, to Schollers and Colledges, *cap.* 6 *p.* 71. the School of *Ilford* Caſe, damage for abating a voluntary Contribution by Mariners and Souldiers, *cap.* 6 *p.* 74 Sir *Thomas Middletons* Caſe, 1590. to alter a Commiſſion ſued out by fraud and covyn, *chap.* 6 *p.* 75. *Riveits* Caſe, 15 *Jacobi*; to order pay of Arrears *chap.* 6 *p.* 76. *Bernard Hydes* Caſe; transfer a truſt *ib.* to order principal, Intereſt and Damages, *cap.* 6 *p.* 79. *Seymour* againſt the poor of *Twyford*. to make amends for hurt done to Land, *cap.* 7 *p.* 120. *ſect.* 4. to decree Lands in Capite or Soccage, *ib.* Lands given to ſundry perſons to ſettle them, *ib.* to order and reform breach of truſt by a Corporation for Lands lying in the body of the County, *ib.* to order in another County, *ib.* to revive Rent extinguiſhed and ſetle it upon others, *chap.* 7 *p.* 121 *Sect.* 4. to decree Lands in ſeveral Counties, and all of them proportionably, *ib.* to charge one for another, *ib. p.* 123. to charge ſurviving Executors, *ib.* to give uſe for damage, *ib.* to make void a Leaſe, and order it to be ſurrendred, *ib.* & *cap.* 7 *p.* 124. *ſect.* 4. to give recompence for Waſt done in Lands, *ib.* to enable Truſtees to have intereſt in Land, and to demiſe the ſame according to the improvement, *ib.* & *chap.* 6 Caſe 5, 6, 9. to order increaſe of Land, and increaſe of Rent, *ib.* to give damages, Coſts or intereſt, *ib.* & *chap.* 6 Caſe 10. *Cooke* 8 10. & Caſe 19, to order Truſtees and Viſitors, or to change them, *ib. p.* 124. to tranſport a Truſt, and appoint other Truſtees, and remove the firſt, *ib.* to revive a Rent extinct by purchaſe, *cap.* 7 *p.* 125. & *cap.* 6. Caſe 3 8. to order a Rent-ſeck, Arrears, and a *Nomine penæ*, *ib.* & *chap.* 6 Caſe 15.

What they have no power in, they cannot make a Corporation, *chap.* 6 *p.* 63. Caſe 2 *Mich.* 43 *Eliz.* they cannot charge part, where the whole Land is chargeable, *chap.* 6 *p.* 64. *Eaſt Greeneſteds* Caſe, *Trin.* 9 *Car.* 1. they cannot make a Rent ſeck

ſeck a Rent charge. *Wyndſor* and the inhabitants of *Farnham*, *Mich.* 2 *Car.* 1. *Cooke* 3 *Part*, *fol.* 40. and *Bernard Hydes* Caſe, *Chap.* 6. They are not to meddle with any Lands belonging to Colledges, or where there are ſpecial Viſiters, *cap.* 7. *p.* 118, 119. See alſo *Sect.* 5, 6. *p.* 120, 121, 124. Nor with a Purchaſor for valuable conſideration, having notice of the Uſe, *chap.* 7. *p.* 125. and *chap.* 6. *Caſe* 15.

Complaint for remedy, if any be grieved, by Decree of Commiſſioners, muſt be made to the Lord Chancellor, or Lord Keeper, or Chancellor of the Dutchy, *Chap.* 1. *page* 4. and *page* 7.

Who may not be Commiſſioners, *vide cap.* 1. *p.* 4. The heads of the Statute, *Numb.* 4

Deviſe upon Condition is good, *cap.* 7. *p.* 114. *chap.* 6. *caſe* 37. *Hobb. Rep.* 136.

Conſcience. Judgments and Decrees, are to be according to Equity and good Conſcience, *cap.* 1. *p* 7.

Conſideration. Purchaſers upon Valuable Conſideration of Laws, Goods or Chattels, are not to be impeached by this Act, *cap.* 1. *p.* 3.

Converſion. Breach of truſt by Converſion of any Lands, *&c.* within this Act, *cap.* 1. *p.* 6.

Lands come to *H.* 6. *Ed.* 6. or *Q. Mary*, by Conveyance, are out of this Act, *cap.* 1. *p.* 3.

Copyhold, may be charged or given to a Charitable Uſe, *cap.* 6. *p.* 80. *Kenſons* Caſe, 41 *Eliz. p.* 81. *Champion* againſt *Smith*, 3 *Jacobi. chap* 6. *p.* 74. *Rivets* Caſe, 15 *Jacobi*, *chap.* 6. *p.* 77. *Plate*, and the Fellows of St. *John*'s, *ch.* 7. *p.* 110. and *chap.* 6. *Caſe* 17, 25, 28.

Corporations, Lands, *&c.* given to a Town Corporate, where there are ſpecial Governors, to direct and govern ſuch Lands, *&c.* are out of this Act, *cap.* 1. *p* 3. *chap.* 6. *p.* 64. *caſe* 2. *Mich.* 44 *Eliz. chap.* 7 *p.* 120. *Sect.* 4. *chap* 6. *caſe* 2. *Sect.* 4. *chap.* 6. *p.* 83. Mayor of *London*'s Caſe.

Coſts of Suite, in what Caſes, *cap.* 1. *p.* 4. *chap* 6 *p.* 67. *Eltham* Inhabitants againſt *Warreyn*, *Mich.* 10. *car.* 1. *cap.* 7. *p.* 124. *Sect.* 4 and *chap.* 6. *caſe* 10. *Cooke* 8. 120. *chap.* 6. *caſe* 19. *chap* 16, 29 *chap.* 7. *p.* 13, 14 and *chap.* 6. 38 *caſe*.

Correction Houſe within the purview of this Act, *cap.* 1. *p.* 1.

Counties ſeveral, where Land is given to a Charitable Uſe, muſt be all charged, *cap.* 6. *p.* 80. The School of *Rugby*, 2 *Car.* 1. *cap.* 6. *p.* 64. Eaſt-*Greenſteds* Caſe, *cap.* 7. *p.* 120. *Sect.* 4. *chap.* 6. *caſe* 2. and *chap.* 7. *Sect.* 4. *Part.* 6. *chap.* 7. *p.* 126. *Sect.* 4. *chap.* 6. *caſe* 24.

Court of Chancery, and Proceedings, and Practiſe thereof upon this Statute, *cap.* 7. *p.* 127. and *chap.* 1. *p.* 4.

Covyn ſhall be impeached by this Statute, *cap.* 1. *p.* 3.

D.

DEcayed perſons are releivable by this Act, *Cap.* 1. *p.* 1.

Damages for cutting down of Trees, *Cap.* 6. *p.* 67. *Eltham* Inhabitants againſt *Warryn*, for abating Money out of Soldiers Wages, *Cap.* 6. *p.* 74. Sir *Thomas Middleton*'s Caſe, 1590. For deteining Money given to a Charitable Uſe, *Cap* 6. *p.* 79 *Seymour* againſt the Poor of *Twyford*, *Trin.* 1634. For Money deteined, given by *W. M. Cap.* 7. *p.* 123. *Sect.* 4. and *Chap.* 6. *Caſe.* 4. Damages for Land of 10 *l. per annum*, improved to 100 *l. per annum*, *Chap.* 7. *p.* 124. *Sect* 4. *Chap.* 6. *Caſe* 10. *Cook* 8. 120.

Decrees of Commiſſioners, not contrary or repugnant to the Decrees and Intent of the Donor or Founder, are confirmed by this Act, *Chap.* 1. *p.* 2. and of what things to be made, *Cap.* 1. *p.* 5. Of what not, *p.* 6. and *p.* 3. Several Decrees made by Commiſſioners, from *Chap.* 5. *p.* 21. to *p.* 33.

Decrees may be Adnulled, Altered, or Enlarged, by the Lord Chancellor, *&c. Cap.* 1. *p.* 4. *Chap.* 7. *p* 127. *Chap.* 6. *Caſe* 5. and *Chap.* 7. *p.* 119, 120. *Sect.* 4. *Chap.* 6. *p.* 64, 67, 68, and *Cap.* 5. from *p.* 56 to *p.* 62. and *Cap.* 6. *p.* 85. *Chriſts Hoſpital*, and *Hawes.*

Deeds. *Chap.*.... Good, and upon valuable conſideration, their force, *Chap.* 7. *p.* 113. *Sect.* 2. and *Chap.* 6. *Caſe* 32. by Deed, a Charitable Uſe may be raiſed, *Chap.* 6. *p.* 105. *Sect.* 1.

Demiſe Frandulent may be made void by Commiſſioners, *Chap.* 1. *p* 3. and they may enable others to Demiſe, *Ch.* 7. *f.* 53. *Mich.* 44 *Eliz.* Reſolv'd by *Egerton*, *Popham*, *Anderſon* and *Cooke.*

Deter-

Determining Power is in the Lord Chancellor, *Cap.* 1. *p.* 4. Expounded, *Cap.* 6. *p.* 86. *Case* 41 *Mich.* 14 *Jacobi. Standish* and *Short*, and *Cap.* 6. *p.* 17. *Case* 42. *Laneelott* and *Allens* Case.

Deviſe. By deviſe of the Rents of Lands to a Charitable uſe, the Land it ſelf doth paſs, *Cap.* 6. *p.* 71. *Steward*, againſt *Germyn* 41 *Eliz.* a good Deviſe. *Kennington Haſtings* Caſe, 9 *Jacobi*, and School of *Thetford*'s Caſe, *ibid. Cap.* 6. *p.* 77. *Plake*, and the Maſter and Fellows of St. *John*'s in *Cambridge*. Deviſe of Copyhold to them, and adjudged good by this Statute. Deviſe to *Jeſus* Colledge good. *Jeſus* Colledge Caſe in the Court of *Wards*, 13 *Jacobi*. Deviſe void, *Chap.* 6. *p* 78. Lord *Montagues Caſe*, and the nature and force of a Deviſe, and ſeveral Judgments therein, from 71, to *p.* 83. and 86, 87, 89, 90, 91, 92, 93, 94, 95.

Directions to Commiſſioners, *Cap.* 2. *p.* 9.

Donors intent muſt be purſued, *cap.* 1. *p.* 4. *ch.* 6. *Eltham* inhabitants, and *Warreyn*, *Cap.* 6. *p.* 84, 85. *Chriſt*'s Hoſpital againſt *Hawes*.

E.

Eaton Colledge exempt out of this Act, *Cap.* 1. *p.* 2.

Enlarging a Decree, is in the Lord Chancellor, &c. *Cap.* 1. *p.* 4.

Equity, a Rule to go by, *Cap.* 1. *p.* 4. *Cap* 7. *p.* 127. *Sect.* 6.

Eſcheate, *Chap.* 1. *p.* 6. Lands come to the King by Eſcheate ſince Q. *Eliz.* are within this Act.

Eſtates come to the Crown before Q. *Eliz.* are out of this Act, *Cap.* 1. *p.* 63 an Eſtate made void by Commiſſioners may be made good and revived by the Lord Chancellors Decree, *Cap.* 6. *p.* 63. *Caſe* 2. *Mich.* 44 *Eliz.* Agreed by *Popham*, *Anderſon*, and *Cooke*.

Edward the Sixth. Eſtates to him charged with a Charitable uſe, and purchaſed of him, are not within this Act, *Cap.* 1. *p.* 6.

Exceptions to Decrees, from *Cap.* 5. *p.* 34. to *Cap.* 5. *p.* 56 to be put in writing, *Cap.* 7. *p.* 127.

Examination of the whole matter upon Complaint of Commiſſioners Decree, is in the Lord Chancellors reſpectively, *Cap.* 1. *p.* 4.

Execution of Orders upon Commiſſioners Decrees, to be taken care of by the Lord Chancellor, Lord Keeper, &c. *Cap.* 1. *p.* 4.

Exchange. If any Land purchaſed by Exchange of the Crown, charged with a Charitable Uſe ſince 12 *Eliz.* it is within this Act. *cap.* 1. *p.* 6.

Executors, when and how chargeable, and with what, *cap.* 1. *p.* 3, 6. *chap.* 6. *p.* 66. *Caſe* 4. 16 *March*, 4 *Car.* 1. and *cap.* 6. *p.* 82. *Penſtred* againſt *Payer* And *cap.* 7. *p.* 123. *Sect.* 4. *Numb.* 18. and *chap.* 6. *p.* 66, 67. *Caſe* 4. 14 *March*, 4 *Car.*

Expoſition of this Statute of 43 *Eliz.* it extendeth to Guifts after the Statute, as well as to Guifts before, *cap.* 6. *p.* 63. *caſe* 2. *Mich.* 44 *Eliz. Numb.* 4.

F.

FEme Coverts Deviſe of a Charitable uſe, void, *cap.* 6. *p.* 83. *Bramble* againſt the Poor of *Havering*, *Trin.* 15 *Car.* 1. Will to be avoided by Commiſſioners and Lord Chancellor, *cap.* 7. *p.* 114. *Sect.* 3. *chap.* 6. *caſe* 37, 40. *Hobb. Rep.* 136. and *chap.* 6, 7. *p.* 110, 111. *Sect.* 1. and *chap.* 6. *caſe* 17, 37, 40. and *Hobb. Rep.* 136.

Fifteens. Charged upon poor Inhabitants, are within this Act, for Releifs, *cap.* 1. *p.* 1.

Founders intent muſt be ſtrictly purſued, *cap.* 1. *p.* 1, 3. *chap.* 6. *Sutton*, *Colfeld*, *Hill.* 11 *Car.*

Frauds, *cap.* 1. *p.* 1, 3, 6. are to be remedied by Commiſſioners, and *cap.* 6. *p.* 75. *Rivets caſe*, 15 *Jacobi.*

G.

GRants come to King *H.* 8. *E.* 6. Q. *M.* before 1 *Eliz.* this Act doth not extend to, *cap.* 1. *p.* 3. *cap.* 1. *p.* 6.

Governors ſpecial of a Charitable Uſe are not impeached by this Act, but for abuſes of truſt they may, *cap.* 1. *p.* 3. and *cap.* 6. *p.* 83, 84. *Chelmsford* poor, and Sir *Henry Mildmays* Caſe, *Mich.* 1649. and *cap.* 6. *p.* 68. the Caſe of *Sutton Colfeild*, *Hill.* 12 *Car.* 1. and *chap.* 7. *p.* 124. *Sect.* 4. *Numb.* 27.

Goods given to a Charitable Uſe, are within this Act, *cap.* 1. *p* 1, 2, 3.

Guifts, what are good, and within this Act, *cap.* 1, 2, 3 6. and *cap.* 7. *p* 109. *Sect* 1. *cap.* 6, 7. *p.* 112, 113, 114, 115. *Sect.* 3.

Gi-

Given, how to be taken, and how far it doth extend, *cap.* 7. *p.* 113. *Sect.* 2.

H.

HAvens within the letter of this Act, *cap.* 1. *p.* 1.

Halls are exempt, *cap.* 1. *p.* 2.

Handicrafts men provided for by this Act, *cap* 1. *p.* 1.

Hearing of Causes is to be before the Commissioners, and of Appeales before the Lord Chancellor, *cap.* 1. *p.* 4.

Hen. 8. and all Lands given to Charitable Uses, and come to him, not to be impeached by this Act, *cap.* 1 *p.* 3, 6.

Hereditaments, answerable for a Charitable Use, within this Act, *Cap* 1. *p.* 1, 2, 3.

Heirs, are responsable for a Charitable Use, *cap.* 1. *p.* 3, 6.

High-wayes, and Uses for their repaires, are within this Act, *Cap.* 1. *p.* 1.

Hospitals. This Act doth not extend to Hospitals that have special Visitors, *cap.* 1. *p.* 6. and *cap.* 1. *p.* 3. and *cap.* 6. *p.* 84 *Christ's* Hospital, and *Hawes*, *cap.* 7. *p.* 11. *Sect.* 1. and *chap.* 6. *case* 38.

Houses decayed are repairable by this Act *cap.* 1. and *cap.* 6. *p* 63. *case* 2. *Mich.* 44 *Eliz. Numb* 3. and *cap.* 6 *p* 67. *Eltham* inhabitants, and *Warreyn*, and *cap.* 6. *p* 85 *Christ's* Hospital and *Hawes*, and *cap. eod. p.* 86, 87. *case* 41. 14 *Jacobi*, *int. Standish* and *Short*, and *cap.* 7. *p.* 120. *Sect.* 4.

I.

IMpotent People relievable by this Act, *cap.* 1.

Inquisitions, and the Formes of them, and by whom to be made, and of what things, *cap.* 1. *p.* 2, 5. and from *cap.* 4. *p.* 12. to *chap.* 4. *p.* 20. Inquisition needs not be in several Counties, where the Charitable Use is to be performed in one County, *cap* 7. *p.* 120. *Sect.* 4. *Numb.* 6. and *chap.* 6. *Case* 3 *East Greensteds* Case. *cap.* 6 *p.* 80. The School of *Rugby*, 2 *Car.* 1.

Information, when and by whom, in what Court, in what causes to be preferred, *cap.* 5 *p.* 34. and the form of one, and Replication thereunto, from *chap.* 5 *p.* 95 to *cap.* 7 *p.* 100.

Infants gift to a Charitable Use is void, *chap.* 6 *p.* 83. *Bramble* against the poor of *Havering*, *Trin.* 15 *Car.* 1. & *chap.* 7 *p.* 110. *Sect.* 1. & *chap.* 6. Case 17, 37, 40. *Hob. Rep.* 136. & *chap.* 7 *p.* 114. *Sect.* 3. and *chap.* 6. Case 37, 40. *Hob. Rep.* 136.

Increase of Land to better Valew then at the time when the Use was raised, is to be allowed, *cap.* 7 *p.* 123. *Sect.* 4. & *cap.* 6 *p.* 68. the case of *Sutton Colfeild*, *Hil.* 11 *Car.* 1, & *Hyssham*, & *Pydwers* case, and the Mayor of *Morpeth*, 5 *Car.* 1 *chap.* 6 *p.* 69. and the case of *Kennington Hastings*, 9 *Jacobi eod. cap. p.* 71.

Incertainty, Lands given to a Charitable Use, without naming by whom, it is good, notwithstanding the Incertainty, *cap.* 6 *p.* 79. *Steward* against *Germyn*, 41 *Eliz.*

Interessed person in any thing given to a Charitable Use, can neither be a Commissioner nor a Juror, *cap.* 1 *p.* 3. 5. 8 *cap.* 7 *p.* 117. *sect.* 4. 8 *cap.* 7 *p.* 124. *sect.* 4.

Interests of Founders is to be pursued, *cap.* 1 *p.* 4. *cap.* 6 *p.* 84. case of *Christs Hospital* against *Hawes*.

Judgments by Commissioners are made good and confirmed by this Act, *cap.* 1 *p.* 2, 3, 4. *cap.* 7 *p.* 119. *Sect.* 4.

Jurors Office, and who may and may not be Jurors, *cap.* 1 *p.* 3, 5. *cap.* 7 *p.* 117. *sect.* 4. they may inquire of Lands in another County, *chap.* 7 *p.* 119. may be challenged, *ib.* and must be Sworn. No Juror must be interessed, in the thing given, *p.* 117.

K.

KIng. All Lands given to Superstitious Uses, are by several Statutes given to the King, yet so, as if there be any Charitable Use intermixed, the King shall have only so much as is given to the Superstitious Use, *cap.* 7 *sect.* 1 *p.* 106, 107. 108, 109, and *Cooke*, 4. 104. *Adams & Lamberts* case, *Stat.* 75 *R.* 2. *chap.* 5, 37. *H.* 8. *chap.* 4. 1 *Ed.* 6. *chap.* 15. *Crooke* 1. *part* 180. *Bridgman Rep.* 105 *Crooke* 2 *part* 51, 52. *Cooke* 4. 104. 1. *Edw.* 6. 14.

The King founds a Free Shool to make it a Corporation, *cap.* 7, 109. where no forfeiture to the King, *cap.* 7 *sect.* 1 *p.* 107, & 108. & *Crooke* 2 *p.* 51. *M.* 2. *Jac. C. B. Holloway & Wathonys* case.

What comes to the King upon Super-

ſtitious Uſes, *cap.* 7 *p.* 106, 107, 108. &c.

L.

LAnds come purchaſed with a charge upon them, of a Charitable Uſe, are within this Act, *cap.* 1 *p.* 6.

Lord Keepers Authority and Power, equal with the Lord Chancellors, *cap.* 1 *p.* 2, 4.

Lands in Capite may be Decreed to Charitable Uſes, and for the beſt profits, *cap.* 7 *p.* 120. *ſect.* 4. chargeable againſt a purchaſer having notice, *p.* 121. with a Rent charge, *ib.* if given to a Corporation, and lye in the body of a County, Commiſſioners of the County may reform miſimployment in the Corporation, *ib. p.* 120. Lands in ſeveral Counties charged with a Charitable Uſe, the Commiſſioners of that County where the Uſe doth ariſe, may decree thoſe Lands in the other Counties, equally to contribute, *cap.* 7 *p.* 120. *ſect.* 4. *&c. ib.* and other like caſes, from *chap.* 7 *p.* 119, 120. to 124. and ſo to *p.* 126.

Lands in *com. Palat. Lanc.* within this Act, *cap.* 1 *p.* 1. 2.

Leaſes are within this Act and chargable by it, *cap.* 1 *p.* 3, 6. may be made voyd, *cap.* 6 *p.* 67. *Eltham* Inhabitants againſt *Warreyn* 10 *Car.* 1. *& chap.* 7 *p.* 119. *ſect.* 4. may be made for improvement of the Uſe, *chap.* 7 125. *& chap.* 6. caſe 5, 6, 9. and *chap.* 7 *p.* 124. *ſect.* 4.

Lunaticks Will of a Charitable Uſe is voyd, *cap.* 7 *p.* 110. *ſect.* 1. *& chap.* 6. caſe 17, 37, 40. *Hob. Rep.* 136. *& p.* 114. *& cap.* 7 *ſect.* 3. *p.* 115.

Limitations are within this Act, *cap.* 1 *p.* 2. and what ſhall be ſaid a good limitation, *chap* 7 *ſect.* 1 *p.* 105. *cap.* 6. *p.* 70. *Woodford* Inhabitants againſt *Parkhurſt*, *Hill.* 14 *Car.*

Lapis Ductilius. Is the donors intent.

M.

METropolitan ſhall not be named inſtead of the Biſhop of the Dioceſs in a Commiſſion, *cap.* 6 *p.* 63. caſe 2. *Mich.* 44. *Eliz.* agreed by *Popham Anderſon* and *Cooke.*

Maymed men, and Mariners, Relievable by this Act, *Cap.* 1. *p* 1. *Chap.* 7. *p.* 111. *Sect.* 1. *chap.* 6. *Caſe.* 13. and *Moores Reports*, *Caſe* 1152.

Maides poor, Marriage of them *Cap.* 1. *p* 1. is provided by this Act.

Mary Queen, This Act doth not extend to any Mannors, Lands, *&c.* come to her, unleſs given to a Charitable Uſe, and abuſe in it, *Cap.* 1. *p.* 3.

Mannors, Lands, *&c.* given ſince 1 *Eliz.* to a Charitable Uſe, and before alſo, are within this Act, *Cap.* 1. *p.* 3.

Meanes lawful, Commiſſioners are enabled to inquire as well by the Oaths of 12 Men, as by all other good and lawful meanes, *Cap.* 1. *p.* 2.

Miniſter, Deviſe of Land for a Preaching Miniſter, a good uſe within the Act, *cap.* 7. *p.* 113. *Sect.* 2. & *Chap.* 6. *Caſe* 36 *cap.* 7. *p.* 112. *Sect.* 2. & *cap.* 7. *p.* 109, 110. 111, 114, 115.

Miſimployment, in all Caſes of breach of Truſt, Falſity, not Imployment, Miſgovernment, or Converſion againſt the intent of the Donor, it is a miſimployment, *cap.* 7. *p.* 15, *Sect.* 3. *& p.* 116. *cap.* 7. *p.* 115. *Sect.* 2.

Money, and Stocks of Money are within this Act, *cap.* 1. *p.* 1, 2. *& cap.* 7. *p.* 112, 113. *Sect.* 2. *& chap.* 6. *caſe* 27. Money deteined from Seamens Wages, recoverable, *cap* 6. *p.* 74. Sir *Thomas Middletons* Caſe, 1590.

Mortmayne, where Mayor and Burgeſſes are capable to take in Mortmayne, *cap.* 7 *p.* 115. *Sect.* 3. A Guift to a Corporation to a Charitable uſe, is no Mortmayne, *Cap.* 6. *p.* 63. *Mich.* 44 *Eliz.*

N.

NEgligence in the imployment of any Lands, *&c.* given to a Charitable Uſe, is inquirable, and to be redreſſed by this Act, *cap.* 1. *p.* 2. & *chap.* 7. *p.* 125. *Sect.* 4.

Nomine pœnæ, is not to be paid by any, but by the heir, if the Rent be unpaid by him, *cap.* 7. *p.* 114. *Sect.* 3.

Notice, Truſtees having notice of any Charitable Uſe, and ſhall break their Truſt, are liable to make recompence, *chap* 1. *p.* 3. 6 Land ſold for valuable conſideration to one that had notice of the Charitable Uſe, the Rent remaines. *cap.* 6. *p.* 64. *Caſe* 2. *Mich.* 44 *Eliz.* Notice to a purchaſer ought to be certain,

Cap. 6. p. 65. Eſt Greneſted's Caſe. One buyes Land, having no notice of the Uſe, yet the Rent remaines, *cap. 6. p. 77. Bernard Hides* Caſe. Notice given to the firſt Purchaſer Adjudged good Notice to the ſucceeding Truſtees, *cap. 6. p. 94. Wiveleſcomes* Caſe, 5 *Car.* 1. Notice to perſons intereſſed muſt be of the time and place certain, *cap. 7. p. 121.* General notice to a Purchaſer is not ſufficient, *ibid. p. 121. cap. 7. p. 121.* Notice given in certain to a Counſellor, Attorney, or Sollicitor, in the behalf of his Client, is good, *chap. 7. p. 122.* Notice to the Son in behalf of the Father, is good Notice, *ibid.* Notice to a purchaſer of the Uſe, makes him liable to arrears, *cap. 7. p. 125. Sect.* 4. A purchaſer having no notice of the Uſe and Rent, yet the Rent remaines, *Cap. 7 p. 126. Sect* 4. Notice to be given to Overſeers of the Poor, *vide* the Warrant, *cap. 2. p. 9.* Decrees good without Notice, *cap. 7. p. 121.*

O.

OAth. Inquiry is to be made by 12 Men upon Oath, *cap. 1. p. 2.* The Forme of their Oath, *cap. 2. p. 11.*

Orders. Commiſſioners Orders made good by this Act, and power thereby given to make Orders, *cap. 1. p. 2.* Purchaſer upon valuable conſideration, in ſome Caſes not to be impeached by their Orders, *cap. 1. p. 3.* All their Orders, *&c.* are to be certified to the Lord Chancellor, *cap. 1. p. 4.*

Ordinary. The Ordinary may in every cauſe execute his Office, this Act notwithſtanding, *cap. 1. p 3.* his power is the ſame as before this Statute, *cap. 7. Sect. 3. p. 115.* & 13 *E. 3. cap. 4.*

Orders, Lord Chancellors power to make them, *cap. 1. p. 2, 3.*

Orphanes are to be relieved by this Act, *cap. 1. p. 1.*

Overſeers of the Poor are all within the purview of this Act, *cap. 2. p. 9.* Overſeers appointed by Founders, are out of this Act, *cap. 1. p. 3.*

Oxford, and all Colledges and Halls, *&c.* therein, are out of this Act, *cap. 1. p. 3.*

Occupier and Owner. Every Occupier or Owner muſt anſwer Arrearages of Rent for his own time, *cap. 7. p. 126.* and *cap. 6. Caſe 33.*

P.

PArliament. The Lords in Parliament may confirm, alter, or adnul a Decree confirmed upon an Appeale, and that is to be final: The Poor of *Eltham* in *Eſſex* Plaintiffs, and the Lady *Kemp*, & *al.* Defendants, 20 *Car.* 1643. *cap. 6. p. 62. Crooke 3 Part, fol.* 40.... & *vide* this Act, *Cap. 1. p. 4.*

Poor people they muſt be, that are relievable by this Act, *cap. 1. p. 1.*

Ports, *cap. 1. p. 1.*

Prieſts. Guiſts to them are all ſuperſtitious, *cap. 6. p. 93 94, 95. Wickham* and *Skeene, in ejectione firmæ. Paſch. 9 Jacobi* in the Exchequer. *Tate* and St. *Michael* in *Cornhill*, *Caſe* 49. *Walpoole*, and the Company of *Goldſmiths*, *cap 6. p. 95.* and *Peele* and *Clothworkers* of *London*, ibid. *Caſe* 52. and ſee from *Chap. 7. p. 106.* to *p. 108. Sect. 1.*

Prayers for the Dead. A Superſtitious Uſe, *chap. 7. p. 106, 107, 108.*

Priſoners, and Redemption of them; are within this Act, *cap. 1. p. 1.*

Proceedings of Commiſſioners in the Execution of a Commiſſion, and the way thereof, *cap. 7. p. 116, 117, 118, 119.* and their power, *ibid. p. 120,* to *126.*

Proceedings of Lord Chancellors, and the way of it, *c. 7. Sect. 6 p. 127, 128.*

Profits of all Lands, *&c.* given to a Charitable Uſe, are within this Act, *cap. 1. p. 2.* except of Lands come to *H. 8. E. 6. Q. Mary*, &c. *cap. 1. p. 3.* Surviving Executors chargeable with profits, *chap. 6 p. 66. Walthamſtow* Poor and *Colby*, 16 *Martii*, 4 *Car.* 1. How profits may be ordered. *Eltham* Inhabitants and *Warreyn*, *cap. 6. p. 67.* Who muſt anſwer the Profits of Land, *cap. 6. p. 82. Peacock* and *Thewer*, *Mich.* 14 *Caroli.* See *Parkhurſts* Caſe before, and *Bernard Hides* Caſe, *Chap. 6. p. 76.*

Purchaſer ſhall not be impeached by this Act, if for valuable conſideration, but for recompence, *cap. 1. p. 3.* for breach of truſt, *cap. 1. p. 6.* what notice is ſufficient to him, *cap. 6. p. 65. Eſt Greenſteds* Caſe. Chargable, with the uſe. *Peacock* and *Thower*, *Mich.* 14 *Car.* 1. and *cap. 7. p. 121, 122.* Rent, and a *Nomine pœnæ.* recoverable againſt a Purchaſer, *cap. 7. p, 125 Sect.* 4.

Preacher. Guiſts to a Preacher within the Purview of this Act, *cap. 7. p. 109.* To maintain a Preaching Miniſter is

is good within the Equity of this Statute, *Kember* againſt *Knighton*, Inhabitants. *Trin.* 15 *Car. cap.* 6. *p.* 82. *cap.* 7, 110, 111.

Purview of this Act, and what are within it, *cap.* 7 *p.* 109. *cap.* 6 *p.* 86. Chriſt Hoſpital and Hawes.

Pariſh and Pariſh Officers, *cap.* 7 *ſect.* 4. *p.* 119.

Q.

Queen. Lands given by the Queen, and her Succeſſors, to Charitable Uſes, are within this Act, *cap.* 1. *p.* 1.

No orders extend to Lands, *&c.* come to Queen *Eliz.* to *H.* 8. *Ed.* 6. Queen *Mary*, but if any part thereof hath been given to any Charitable Uſes, *&c* at any time ſince Queen *Eliz.* Reign the Commiſſioners as concerning the ſame Lands, *&c.* make Orders and Decrees therein, according to this Act, notwithſtanding the preceding Proviſo, *cap.* 1 *p.* 3, 4. and *p.* 6. *Numb.* 8.

R.

Recompence to be made for breach of truſt, *cap.* 1 *p* 3, 6. Leſſee to make recompence, *cap.* 7 *p.* 123. Purchaſer lyable to make recompence, *cap.* 7 *p.* 118. *cap.* 6 *p.* 115.

Recovery. In caſe of a common recovery, to cut off an Entail, if no judgment be given to the Vouchee, to have in valew, it is a void Recovery, *Reſolut.* by *Littleton* Lord Keeper, *int.* Plake, and Maſters, and Fellows, of St. *Johns* in *Cambridge*, *Mich.* 14 *Car.*

Releaſe, fraudulent impeached by this Act, *cap.* 1 *p.* 3. to deceive a truſt, *cap.* 1 *p.* 6.

Relinquiſhment of an Eſtate, come to the Queen to defraud a truſt, is within this Act, *ib.*

Relief. All gifts given for Relief of poor, *&c.* are within this Act, *cap.* 1 *p.* 1. No relief upon a Bill of Review, after an Appeal, but in Parliament, *cap.* 6 *p.* 72. *Windſor* and *Hiltons* caſe, *Mich.* 1626.

Reference to the Judges and their opinion in the caſe of an Obit. *cap.* 7 *ſect.* 1. *p.* 107. *cap.* 6 *p.* 86. Chriſt Hoſpital and Hawes.

Remedy may be for Waſte. Coſt, Damages, to void a Leaſe, for repairs, intereſt, *&c. cap.* 6. *p.* 67. *Eltham* Inhabitants and *Warreyn*, 10 *Car* Where a miſemployment, *cap.* 7 *ſect.* 4. *p.* 116. againſt Decrees, where *cap.* 1 *p.* 2. *&* *p.* 64, 68, 69, 119, 120.

Remainder to a Charitable Uſe, good without a peculiar Eſtate, *cap.* 7 *ſect.* 2. *p.* 113.

Rent. A rent Charge extinct, may be revived, *cap.* 6 *p.* 64. *Eaſt Grenſteds* caſe, *Trin.* 9 *Car.* a Rent charge in ſeveral places muſt be charged upon the whole Land, *cap.* 7. *p.* 65. *ib.*

Rents revived, *cap* 6 *p* 70. Inhabitants of *Woodford*, and *Parkhurſt*. By Will, *cap.* 6 *p.* 81. *Steddows* caſe, 20 *Jacobi.* Rent ſeck within the Purview of this Statute, *cap.* 7 *p.* 110 By a deviſe of the Rent, the Land paſſeth, *cap.* 6. *p.* 112. Rent and *a Nomine pœnæ* deviſed, and a good charge, *cap* 7 *p.* 114 Rent extinct revived by a Decree, *cap.* 7. *ſect.* 4. *p.* 121. Rent continued, *ib. p.* 122. Rent deviſed for maintenance of the poor in an Almes houſe, good, *cap.* 7 *ſect.* 4 *p.* 124. Rent to revive a Rent extinct is good, *cap.* 7. *p.* 125. *&* *chap.* 6. caſe 3. 8. Commiſſioners cannot make a Rent ſeck a Rent charge, *cap.* 7 *ſect.* 4 *p.* 126.

Replication, to an Information of Acts general, from *cap.* 7 *p.* 101. to *p.* 104.

Review Bill, no Bill of Review after an Appeal to Lord Chancellor, but in Parliament, *cap.* 6 *p.* 26. *Windſor* and *Hiltons* caſe, *Mich.* 1626.

S.

Schools and Schollars, are provided for by this Act, *cap.* 1 *p.* 1, 3. *cap.* 7. *p.* 98, 109, 111, 114.

Sea banks, and their repairs, are within this Act, *cap.* 1. *p.* 16.

Seales, Certificates are to be under the Hands and Seals of the Commiſſioners, *cap.* 1 *p.* 6.

Settlement of Lands. Commiſſioners may ſettle Lands given to Charitable Uſes according to the improved, valew, and the intent of the Donor, *cap.* 7 *ſect.* 4. *p.* 123, 125. 8. *cap.* 6. caſe 5, 6, 9. Commiſſioners may transfer a truſt, and ſettle it upon others, *cap.* 7 *ſect.* 4. *p.* 125.

Souldiers. Maymed Souldiers are to be relieved by this Act, *cap.* 1 *p.* 2. 6. and of Money, and the payment thereof, *cap.* 7 *ſect.* 4. *p.* 119. *ſect.* 5, 6.

Statute expounded, *cap.* 6 *ſect.* 6. *p.* 63. and

and extends to Guifts after, as well as to Guifts before.

Surrender. Lands come to the King or Queen by ſurrender, given to Charitable Uſes, are within this Statute, *Cap.* 1. *p.* 3, 6. *Cap.* 7. *Sect.* 4. *p.* 118.

T.

TAxes. Are within this Act, *Cap.* 1. *p.* 1, 5. and the purvew thereof, *cap.* 7. *p.* 109.

Tenements given before and ſince 1 Queen *Elizabeth* to Charitable Uſes, and abuſe of them, are within this Act, *cap.* 1, 2, 6.

Time. Commiſſioners are to appoint a certain time of the Execution of their Commiſſion, *c.* 1. *p* 5.

Title. No perſon pretending Title to any Land, &c. given to a Charitable Uſe, ſhall be named a Commiſſioner, or a Juror, *cap.* 1. *p* 3.

Towns This Act doth not extend to Corporate Towns that have ſpecial Viſitors, appointed by Founders to diſpoſe of their Donations, but in caſe of fraud, breach of truſt, &c. *cap.* 1. *p.* 3.

Tradeſmen decayed are hereby relcivable, *cap.* 1. *p.* 1, 2, 6.

Truſtees and Truſts. Truſtees may decree a Leaſe in truſt charged with a Charitable Uſe, *cap.* 6. *p.* 63. Agreed by *Popham*, *Anderſon*, and *Cooke*. *Mich.* 44 *Eliz.* may transfer a truſt, *cap.* 6. *p.* 77. *Bernard Hides* Caſe may decree Land againſt the *Ceſtuy que* Truſt, *cap.* 6. *p.* 94. *Wiveleſcomes* Caſe, 5 *Car.* 1. Breach of Truſt againſt the Donors intent, *cap.* 7. *p.* 115. Increaſed valew not paid, is a breach of Truſt. *Sutton Colfeilds* Caſe, *Hill.* 11 *Ca.* *cap.* 6. *p.* 68. Breach of truſt in Viſitors, *ibid.* and *cap.* 6. *p.* 69. *Hynſhaw* and *Pydners* Caſe againſt the Mayor of *Morpeth*: and ib. the breach of truſt in not beſtowing Land in the increaſed valew. When Viſitors break their truſt they may be queſtioned, *cap.* 6. *p.* 84. *Chelmsford* Poor, and Sir *Henry Mildmay*, *Mich.* 1649. Commiſſioners may enable Truſtees to have intereſt in Land given to a Charitable Uſe, *cap.* 1. *p.* 122. To order Truſtees to make Leaſes, *ib.* To order Truſtees, and to alter and change them, *ib.* *p.* 124. May appoint Truſtees, and remove the firſt, *ib.* *p.* 125.

V.

VIſitors ſpecially appointed by Donors, are not to be impeached by this Act, *cap.* 1. *p.* 3. If they break their truſt they may, *cap.* 6. *p.* 68. Caſe of *Sutton Celford*, *Hill.* 11. *Ca.* 1. and *Cap.* 6. *p.* 84. *Chelmsford* Poor, and Sir *Henry Mildmay*, *vide*, *Cap.* 7. *p.* 125. and *cap.* 6. *Caſe* 7.

Univerſities, and all Colledges and Halls, &c. within them are out of this Act, *Cap.* 1. *p.* 2, 6.

Uſe. If Lands given to maintain a Schoolmaſter and no other uſe be expreſſed, it is a breach of Truſt if miſimployed, *Cap.* 7. *p.* 123. Good Uſes in certain, ſhall be prefer'd before a Superſtitious Uſe uncertain, *cap.* 7. *p.* 107.

Uſes. What are good, *c.* 1. *p.* 1. & *c.* 6. *p.* 82. *Penbe* againſt Inhabitants of *Knighton*, *Trin.* 15 *Car.* 1. *c.* 7. *p.* 105. & ib. *p.* 108, 109.

What are ſuperſtitious, *c.* 7. *p.* 105, 106, 107, 108, 112.

What mixt, *Cap.* 7. *p.* 110, 111. If Land be given for the uſe of the Poor, and that the Poor ſhall pray for the Donors ſouls, the Charitable Uſe is the peace, and ſhall preſerve the Land, *c.* 6. *caſe* 7. *Crooke* 180, 181.

What within the Purveiw and Equity of this Act, *c.* 7. *p.* 109, 110, 111, 112, 113, 114, 115.

W.

WAges of Soldiers are not to be abated, *c.* 6. *p.* 74. Sir *Thomas Middletons* Caſe, 1590.

Warrants. Commiſſioners Warrants, and the ſeveral formes of them, *c.* 2. *p.* 9, 10, 11.

Waſte. Who Chargeable with Waſte, and for what, *c.* 7. *p.* 123.

Wincheſter Colledge not within the Act, *cap.* 1. *p.* 2.

Will declared *& Noncupative.* A Uſe raiſed by Will declared, though defective, is good, *Caſe* 6. *p.* 73, 74. *Caſe* 12. A Deviſe to one miſnamed is good, *ibid.* *p.* 81. Rent decreed upon a Will *Nuncupative*. *Stodders* Caſe, 20 *Jacobi*, *ibid.* 81. Deviſe by miſtake to the

Uſe is good, *ibid.* Maſters and Burgeſſes of *Redding* againſt *Lane*, 40 *Eliz.* & *ibid. p.* 95. *Caſe* 52. A Charitable Uſe may be raiſed by Will, *Cap.* 7. *p.* 105. How a Guift by Will ſhall be taken, *cap.* 7. *p.* 112. Deviſe by Will *Nuncupative* of Rent is good by way of limitation, *cap.* 7. *p.* 114, & 115.

Wood waſted may be recompenced by the Act, *cap.* 7. *p.* 123.

YALE LAW LIBRARY

FINIS.

the Reſpondents are adviſed. And theſe Reſpondents further ſay, That they are informed, the ſaid Commiſſion is returned into this Court, and there remain of Record: Wherefore theſe Reſpondents humbly pray the ſaid Decree may ſtand ratified and confirmed, and the ſaid Decree and *Charitable Uſe* may be performed, and theſe Reſpondents diſcharged with their Coſts in this behalf, moſt wrongfully ſuſtained.

Anſwers and Exception to Decrees.

17 Jacobi. William Blomefield, *and the Inhabitants of* Stowe-Market.

Suſſex. *The Caſe.* *William Seamour* ſeized in Fee of divers Meſſuages, *&c.* in *Stowe-Market*, by his Deed, dated the tenth of *October*, 10 *H.* 8. did Enfeoffe *Margaret Stowe*, and divers others of the Premiſſes, to the uſe of the ſaid *Margaret*, for life; and after to perform her Will: and *Margaret* by her Will, dated the firſt of *July* 1523. did give ſeveral of her Lands to the uſe of the Prieſts Service, in the Church of *St. Peter* in *Stowe-Market*, to pray for her Soul, and the Souls of her Husbands and others, for 99 years and the Lands to be ſold by her Co-Feoffees, and the one half of the Money to go to the making of the High-way, between *Stowe* and *Ipſwich*; and the other to be divided, one part to a Prieſt, to ſay Prayers in the ſaid Church of *S. Peter*, for her Soul, and the Souls of the afore-rehearſed; and the other, for the reparation of the ſaid Church, *Margaret* dyed, and the 99 years by the Statute of Chauntreys, came to King *Edw.* the VI. who granted the reſidue of the 99 years, to *Edward Warner*. The 99 years expired the ſixth of *July* 1622. and 17 *Jacobi*, the Lands were worth 40 l. *per ann. de claro*. In 17 *Jacobi*, the Leaſe being unexpired, and all the Feoffees dead, and no Feoffment renewed; one *William Blomefield* claimed the Reverſion, as Cozen, and next Heir of *Margaret*, and endeavoured to obtain the term of 99 years; And the Jury found, that the claim and endeavour of *Blomefield*, was, and would be, to the defrauding and defeating of the ſaid *Charitable Uſe*, and intents of the Donor. That the Occupiers of the Land had done great waſte, and that *John Keeble* was Heir to the Feoffee, *John Keeble*, and *Robert Symonds* were Heirs of the Feoffee *Richard Symonds*, and that either *John Keeble* or *Robert Symonds*, the Feoffees, was ſurvivor of the Co-Feoffees, and were ready to execute the *Charitable Uſe*.

Exceptions, *Blomefield* excepted againſt the proceedings, and ſaid; There ought to be no Inquiry or Decree, until the 99 years were expired. (2) That by the words of the Will, the Lands could not be ſold till the 99 years ended, if any were then being, that had authority to ſell them. (3) That no ſale could be ever made, becauſe none of the Co-Feoffees were living. (4) That if ſale were to be made, or any act to be done in time, according to the Will, yet,

yet all the Lands in the Will ought not at any time to be ſold or imployed to the ſaid *Charitable Uſes*, for that all were not given for the ſaid *Charitable Uſes*.

The Commiſſioners diſallowed the Exceptions, and found them to be a deſign to get the poſſeſſion, and to keep the Land, notwithſtanding he had notice of the *Charitable Uſes*; and the Commiſſioners conſidering, that it was not neceſſary to ſee the Lands for that the ſame were of ſuch yearly value, as that the Moyety would maintain the Highways, and the one halfe of the other Moyety, would ſerve for the maintainance of a Clerk, to Sing, and Celebrate Divine Service in the Church aforeſaid, and the reſt would ſuffice to repair the Church; The Commiſſioners thereupon Decree, That the ſaid *Blomefield*, and all claiming under him, and *Keeble* and *Symonds* ſhould execute ſuch reaſonable Conveyance of the Premiſſes to *John Howe* and *Richard Draper*, *&c.* as ſhould be reaſonably deviſed: And that after the expiration of the Leaſe, the now Feoffees and their Heirs, ſhould imploy the Premiſſes as aforeſaid. And that now Feoffees ſhould be made, *&c.* To this *Blomfield* put in Exceptions (1) That the Feoffees were all dead, and none enabled to make ſale, according to the Will. (2) That the Commiſſioners decreed the Heir of *Margaret*, to aſſure to the Uſes mentioned in the Decree, which were contrary to the Will, and not warranted by the Statute. (3) That becauſe there was not, nor could be, any miſ-imployment before the end of 99 years, nor before a miſ-imployment, the Decree was not in force to bind any part (4) That if *William Blomfield* did, at the end of the Leaſe, ſell the Lands, and imploy the ſame as the Will directed, then there was no miſimployment, or cauſe of a Decree againſt him, and ſo the Decree was void (5) That whereas *Blomfield* was decreed to aſſure all the Lands expreſſed in *Firbuſhers* Deed, to the Perſons and Uſes in the Decree expreſſed; The Exceptant ſaith, That divers Land in *Firbuſhers* Deed, were not deviſed, and ſets out the particulars, ſome being Freehold, and ſome Copyholds and that he was admitted to the Copyhold, as Cozen and Heir of *Margaret*, and recovered by ſeveral Trya's.

The Reſpondents anſwer, (1) That the Decree was good againſt the Exceptant, for that all the Co-Feoffees were dead, and had neglected the Truſt in making a new Feoffment. (2) That the Exceptant being Heir of *Margaret*, ought by the Statute, to be decreed, to aſſure the Lands to the Uſes and Perſons, expreſſed in the Decree, and was well warranted by the Statute, and tended to the execution of the ſaid Will and and true intent of the ſaid *Margaret*, which otherwiſe ſhould be wholly defeated. (3) And that if the Exceptant ſhould have the Land, as Heir, the *Charitable Uſes* ſhould be defrauded. (4) That the Waſte and Spoil in pulling down of Houſes, digging the Ground, and cutting down of Trees, whereby the Land was impaired, and the practiſes of the Exceptant, utterly to defeat the Charity, were miſimployments, abuſes, and offences within the Letter of *Anſwer.*

the Statute, and provided against by the ſaid Statute. (5) That the ſuppoſition of the Exceptants ſelling the Land at the end of the Leaſe, to perform the Will, was ſuch a ſuppoſal, as could not overthrow the Decree. And if he were ſo well minded, yet the Waſtes and Spoils were miſ-imployments within the Statute, and good cauſe of the Decree, preſently before the Term was ended; and averr the Land to be the ſame deviſed.

Reply. To which the Exceptant replyed, That the Decree as to the part decreed, to maintain the Clerk, was repugnant to the Will, and void, and the ſervice in the Will could not be performed, and ſo a fourth part would come to him. (2) That the Lands were divers years holden by Patentees, who claimed under the Will, and the Trials of no force.

Decree. Upon hearing the whole matter, the Lord Keeper was of opinion, That the Feoffees had no power given them by the Donor to ſell Lands. (2) That certain Lands Decreed, were not in the Deviſe. (3) That the Commiſſioners had altered and changed the Uſe; but for ſetling of which it was decreed, That the Profits of all the Lands (except as therein is excepted) ſhould for ever be diſpoſed in manner following, *viz.* One halfe to the High-ways, one Moyety of the other halfe to the repair of the Church, the other Uſe, given to ſing for the Soul of *Margaret, &c.* to be divided, one halfe to the poor of *Stowe*, the other to the poor of Little where the inhabited. And that *Blomfield* ſhould make a Feoffment. And a Commiſſion was ordered to the Commiſſioners to divide the Lands, and take ſeveral Feoffments to the ſeveral Uſes. And the Lands were divided, and ſett out, and ſeveral Feoffments thereof made accordingly.

Michael. 22 *Jacobi.*

Rowe, *againſt the Poor of the Alms-houſe in* Taviſtock, *in Com.* Devon.

Devon. *John Fitz.* obtained a Leaſe of divers Meſſuages and Lands, from the Lazermen of the Almshouſe in *Taviſtock*, in the County of *Devon*, for 100 years, at 5 Nobles *per ann.* *John Fitz.* makes a Leaſe thereof in *Anno*, 1619. for 60 years.

Commiſſioners for *Charitable Uſes* decree, That the preſent Governors ſhould enter and hold the Lands, and ſhould Lett them but for ſeven years at the Rack-Rent. And that *Rowe* ſhould pay 50 l. for the mean Profits by him received.

P. 22 Jac. The Lord Keeper upon hearing the Exceptions, orders, That *Rowe* ſhould ſurrender his Leaſe, and take a new Leaſe for twenty one years, at 4 l. *per ann.* which was 46 s. 8 d. increaſe of Rent, *per ann.*

5 Car. Prim. Rot. 1.

The Town of Northampton.

LAnds given to a *Charitable Uſe*, lying among the Exceptants Lands, were decreed to be ſett out by the Exceptant, by a day, which he not doing, a Commiſſion was awarded, to ſett out ſo much of the Exceptants Lands for the *Charitable Uſe*, as the Lands originally given to the Poor, which was done accordingly.

Termino Trin. 17 Jac. 1619.

The poor of Yervel, *in Com.* Somerſet *againſt* Francis Sutton, *and others.*

THe King, by his Letters Patents, gave Licence to *John Woborne* and *Richard Levett*, Chaplains, that they in the Honour of the Holy Martyrs *St. George* and *St. Chriſtopher*, ſhould found one Alms-houſe of one Cuſtos, for two Wardens, and twelve poor people at *Yervel*, in the County of *Somerſet*. And that the ſaid Cuſtos, Wardens, and poor People, and their Succeſſors, might Purchaſe, Procure, and Receive Lands, Tenements, Rents, and other Poſſeſſions, to the value of 10 Marks yearly, for ever. 18 *Edw.* 4. *Woborne* and *R. Levett* founded an Alms-houſe, and 14 *Junii* 18 *Edw.* 4. by Writing, Indented, Confirmed, to the Cuſtos, Wardens, and poor people by name, 128 Acres of Land in *Makeford*, and other places in the County of *Dorſet*, called *Garland*. The King 25 *Nov.* 18 *Edw.* 4. gave Licence to *John Woborne*, that he might give 128. Acres, *&c.* And to *Thomas Bartlet* and others, that they might give to the ſaid Cuſtos, *&c.* fourteen Meſſuages, and twenty Acres of Land in *Yervel*, &c. which were not immediately holden of the King. And it was found by *Inquiſition*, taken upon the Statute of *Charitable Uſes*; that ſome of latter years having had the cuſtody and diſpoſing of the ſaid Lands and Tenements, had miſimployed them, contrary to the Truſt in them repoſed, *viz. F. H.* being Cuſtos of the ſaid Alms-houſe, with the Wardens and poor People of the ſaid Houſe, then being, by their Deed, dated 20 *September* did Demiſe to *W.* a Cloſe, *&c.* for forty one years, for forty ſhillings Fine, and twenty three ſhillings *per ann.* Rent; and that that Cloſe was well worth a Fine of ten pounds, above the Rent; And that the ſaid Cuſtos, Wardens, and poor people, 20 *April*, 30 *Eliz.* did Demiſe to *F. M.* a Tenement and Cloſe, *&c.* for ſixty years; and ten ſhillings Rent; and alſo that they did Demiſe part of the ſaid Lands to *F. H.* for ſixty years, for forty ſhillings Fine, and fourteen ſhillings *per ann.* Rent, the Premiſſes being deemed then, to be well worth a Fine

9 *Nov.* 17. Edw. 4.

The Caſe.

18 Edw. 4.

25 *Nov.* 18 Edw. 4.

1619.

of 10 l. That they demiſed a Meſſuage alſo for ſixty years, and thirty ſhillings Rent, which Premiſſes were well worth a Fine of five pound. And divers other Leaſes were found, which were worth more Fine and Rent than was paid: And that the Cuſtos took the Fine, and the Wardens and poor people were only called to the ſealing of the Deeds; and it was alſo found, That ſome of them that bought, as of thoſe that ſold the Premiſſes aforeſaid, knew the Lands were given to *Charitable Uſes*. Where-
Com. Decree. upon the Commiſſioners decree, That all the parties that had broken the Truſt repoſed in them, and defrauded the Uſes by Leaſe *&c.* ſhould pay the poor people, which had received prejudice thereby, a full recompence,

Exceptions. 1. To which Decree, *Francis Sutton* made theſe Exceptions. (1) That the Commiſſioners did not give warning, nor call the ſaid parties to the Inquiry, whereby they could not have their lawful challenges.

2. That the ſaid Alms-houſe and Lands given, were within the Town of *Yervel*, which was an antient Town Corporate. And that by the firſt *Proviſo* in the Act, it is expreſly limited, That that Act, nor any thing therein contained, ſhall not extend to any ſuch Land.

3. That there are ſpecial Governors appointed to govern and direct the Lands and Tenements, given to the ſaid Alms-houſe, namely, a Cuſtos and two Wardens, by the expreſs words of the Donors or Founders of the ſaid Alms-houſe, and ſo by ſpecial Proviſo, the ſame are excepted in the ſame Act of Parliament.

4. That it appeared by the Inquiſition it ſelf, That ſuch Grants or Leaſes as are ſuppoſed to be made for too ſmall a Fine, and for too large a Term, are either void or voidable by the Ordinance of the ſaid Houſe, or elſe the benefit thereof did redound, and ought to come to the Leſſees Uſe. And the Leſſors or Governors made no benefit thereof, And therefore if any Decree, or Order ſhould have been made, it ſhould have been made againſt the Leſſees, who had notice of the Truſt, and not againſt the Leſſors or Governors.

5. That *Francis Sutton* is only Executor unto the ſaid *John Hacker*, the late Cuſtos, and ſo no way within the Statute.

The poor Peoples Anſwer.

Anſwer. 1. THat the Commiſſioners did call the parties intereſſed, according to the form of the Statute.

2. That the Alms-houſe and Lands, or the greateſt part of them, are not within the Town of *Yervel*; neither is the ſaid Town, a Town-Corporate, within the Proviſo of that Statute.

3. That there are no ſpecial Governor or Governors within the ſaid Town, within the meaning of the Proviſo of the ſaid Statute, appointed to govern or direct the Lands, Tenements, and things diſpoſed of, to the Uſes aforeſaid, neither are the Cuſtos and two Wardens of them-

themſelves, or by themſelves, appointed to Govern or direct the Lands, Tenements and things to the uſes aforeſaid, within the words or meaning of the Proviſo of the ſaid Statute.

4. That the Leſſors and Governors, and not the Leſſees ought to be charged, as by the ſaid Order and Decree they are charged.

5. That *Francis Sutton* ought to be charged, as in the ſaid Order and Decree he is charged, both by the words, and alſo by the meaning of the ſaid Statute, and prayed execution upon the Order, *&c.*

Upon hearing of the Cauſe, the Defendants Counſel only opened two of the Exceptions, becauſe they were upon matter of Law. (1) One was, That by Law, the Hoſpital being within a Market-Town, and having a Cuſtos and Wardens, ſpecial Governors, the ſaid Hoſpital was not within the ſaid Statute. (2) The other, for that the Decree did not charge the Defendants for Letting the Lands belonging to the Hoſpital of *Tervel*, not at the higheſt rate, and did not charge them with fraud, but only with letting at an under-value. And foraſmuch as the farmer of the ſaid points in Law, was ſuch as might ſtrike at the root of the ſaid Statute, if the ſame might have been admitted; the Lord Chancellor thought not fit to give much way thereunto But touching the latter, his Lordſhip conceiving, That if the under-valuations were not great, nor done upon fraud, it was not meet to queſtion the Defendants for the ſame; but in caſe there were negligence in Letting at, and undervalue the recompence as to be made by the Tenants, and not by them that made the Leaſes. *25 April 16 Jacobi*

The Defendants Counſel alledging, That the Leaſes made of the Lands, were made but as the Tenants might live thereby, and according to the cuſtom of the Countrey, and upon as great Fines and Rents, as had ever before been given for the ſame Lands. Objections.

The Plaintiffs Counſel alledging, That the Leaſes were made by the Leſſors, at a far undervalue to their Children and Friends, by practiſe and fraud. It was referred to Sir *John Bennet* to conſider, whether the Leaſes were made, according to the cuſtom of the Countrey; and whether the Leaſes were made to the Children and Friends of thoſe that made them. Reply. Reference.

But afterwards, upon the Plaintiffs Petition, his Lordſhip ordered a Commiſſion to the Biſhop of *Bath* and *Wells*, and to Doctor *Huſſey*, one of the Maſters in *Chancery*, who (*inter* all) found that the Leaſes were made 14 years before the Statute of 43 *Eliz.* And to end all differences, the Commiſſioners Reſolved. Commiſſions awarded to Maſters in *Chancery*.

1. That the Terr-Tenants, and *William Grobham*, whoſe Predeceſſors, Cuſtos of the ſaid Alms-houſe negligence, was inexcuſable, ſhould pay 10 l. to the poor of the Alms-houſe. Maſters Report.

2. That for a fuller amends unto the poor people, the Tenants who had taken Leaſe for longer terms, than the Statute made for Hoſpitals doth permit, ſhould ſurrender the ſame, and take

new

new Leaſes for ſuch tearms, as the Statute doth allow.

3. That for thoſe Leaſes, the Tenants ſhould have their Rents improved, or pay ſuch reaſonable Fines, as might make beſt for the Poor, and not be unreaſonably burdenſome to the Tenants.

4. That for preventing of future abuſes, concerning the ſaid Hoſpital the Biſhop and Mr. *Huſſey* thought fit (*inter alia*) that from thenceforth they ſhould Lett no Leaſes for longer terms than the Charter of their Foundation and the Laws of the Land have preſcribed, which being certified by the ſaid Commiſſioners, the Lord Chancellor confirmed the ſame.

Decree.

Termino Paſch. 16 Caroli ſecundi, Robert Wright *and the School of* Newport-Pond *in* Eſſex.

The Caſe.

This Caſe is printed in Mr. *Hearns* Book, but not the Exceptions, &c.

JOyce *Francklands* Widow, ſeized in Fee of a portion of Tythes in *Banſted* in *Surrey*, by her laſt Will, dated 20 *Feb.* 1586. deviſes the ſame then in Leaſe, for divers years to come, at 7 l. *per ann.* to five perſons, and their Heirs, to the intent, that they and their Heirs and Aſſigns, ſhould yearly, for ever, imploy, and beſtow the yearly Rents, Iſſues, and Profits thereof (*inter alia*) to the erecting, maintaining, and finding of a Free Grammar School in *Newport* in *Eſſex*, of a competent number of Scholars, of the Children of the Inhabitants there; if there were but one Maſter, he ſhould have 20 l. *per ann.* And if a Maſter and Uſher, then the Maſter 20 Nobles, and the Uſher 20 Nobles. and appoints the Maſter of *Gonvyel*, and *Caius* Colledge in *Cambridge*, Governor.

1 Nov. 41 *Eliz.* 1599.

Joyce dyed ſeized, the Deviſees received the Rents, and erected a School-houſe, and deviſed the ſame portion of Tythes to *Richard Wright* for 36 years, at 7 l. *per ann.* The Deviſees in conſideration of the Surrender of that Leaſe, and of 40 l. diſburſed by *Richard Le Wright* in Suits at Law, brought againſt him for the Premiſſes, demiſed the ſaid Tythes to *Richard Le Wright*, from *Michaelmas* then laſt, for 50 years, at 7 l. *per ann. Rich. Le Wright* made *Robert Le Wright* his Executor, and dyed, 1634. *Robert* enjoyed the Tythes during the reſidue of the term of 50 years, and the Tythes from *Richards* death, until 1650. were worth 43 l. *per ann.* above the Rent. And afterward, the ſurviving Truſtees, demiſe the Tythes to *Edward Nightingale*, after the determination of the Leaſe of 50 years, for 21 year, at 10 l. *per ann. Edward Nightingale* for 150 l. ſold that Leaſe to *Robert Le Wright*; and from *Michaelmas*, 1650. until *Michaelmas* 1660. at which time, the Leaſe of 50 years ended, the Tythes were worth 60 l. *per ann.* above the Rent.

27 Nov. Jac. *The Caſe.*

16 *Apr.* 22 Car. 1. 1646.

26 Nov. 14 Car. 2.

Commiſſioners Decree.

These things being found by Inquiſition, Commiſſioners upon the Statute for *Charitable Uſes* did decree, That the concurrent Leaſe, made in 1646, at the Rent of 10 l. *per ann.* was made contrary to the intent of the Donor, and was a miſimployment of the ſame Tythes, and a defrauding the *Charitable Uſe* within the ſaid Statute. And that the ſame Leaſe, and the Aſſignment thereof to *Robert Le wright*, and all mean Aſſignments of the ſame, ſhould

from

from thenceforth be utterly void, and of none effect. And that the Feoffees ſhould Lett the ſame Tythes at the true value, and that no Leaſe ſhould be afterwards made for above 21 years in poſſeſſion.

Robert Le Wright put in Exceptions to the Decree, (1) That the Commiſſioners had not power to make void the Leaſe in Reverſion made to *R. Nightingale* by the Feoffees, who had the Fee and Inheritance of the Tythes. (2) Nor to decree a greater Rent to be reſerved upon any new Leaſe than was reſerved at the making of the Will. (3) Nor to decree an increaſe of the Rents againſt him, but rather againſt the Feoffees that broke the Truſt. And that *R. Le Wright* had aſſigned to one *Andrews*, for a valuable conſideration, *viz.* 150 l. *Exceptions.*

But the Lord Chancellor, upon full hearing of the ſaid Exceptions, confirmed the Decree. *Decreed.*

Higgins *and the Poor of* Southampton.
13 *April*, 1636. Car. 1.

Nathaniel Mill, by his laſt Will in Writing, deviſed ſeveral ſums of Money, in all amounting to 41 l. to be paid out of the Mannor of *Wolſton*, to the Mayor, and the three Senior Aldermen of *Southampton* yearly, for putting out Apprentices, Relief of aged perſons, *&c.* *The Caſe.*

Commiſſioners upon the Statute of *Charitable Uſes*, decree the Money. *Com. Decree.*

The Exceptant being owner of that Mannor, complained of the Decree, for that the ſaid Mannor was holden in *Capite*, and ſo the ſaid *Will* was void, as to a third part thereof. And upon hearing before the Lord Chancellor, *Bridgeman*, aſſiſted by Mr. Juſtice *Wild*, and Mr. Baron *Wyndham*, the Decree was confirmed to all the three parts. *Exceptions.* *Com. Decree confirmed.*

Trin. 21. *Car. Regis* 2.

Chriſtopher Meek *Exceptant*, James Hyde, *Dr. in Phyſick, on behalfe of the Chancellor, Maſters and Scholars of* Magdalen Hall *in the Univerſity of* Oxon, *Reſpondents.*

John Meek, Clerk, ſeized in Fee of divers Meſſuages and Lands in *East Smithfield*, in *St. Katherines*, and *Aldgate*, in *Middleſex*, by his laſt Will in writing, dated in *Nov.* 1665. did give 100 l. *per ann.* for ever, to ten poor Scholars, to be choſen out of the Free-School of *Worceſter*, and placed and educated in *Magdalen Hall* in *Oxon*, to wit, to each of them 10 l. and what his Lands ſhould fall ſhort of 100 l. *per ann.* ſhould be ſupplyed out of his perſonal Eſtate by his Executors. And if the Rents ſhould increaſe, then more Scholars ſhould be elected, *&c.* and have 10 l. *per ann.* apiece; and 14 *Feb.* 1665 he dyed, ſeized of Lands, of the value of 84 l. *per ann.* This Will was ſuppreſſed, and a Nuncupative Will ſet on foot by one *Magwick*, and *pendente lite*, Letters of Adminiſtration were granted. *The Caſe.*

granted to Dr. *Hyde*, Principal of *Magdalen Hall* and *Syndick* of the Univerſity of *Oxon*, and the Nuncupative Will was afterwards ſet aſide; and one *John Meek* was Heir at Law, and refuſed to convey the Lands, according to the written will, and no Rent was paid, but lay in the Tenants hands. And Dr. *Hyde*, as Adminiſtrator, had received 100 l. which Matters were proved by Witneſſes, and found by Inquiſition. And further, That the Lands and Tenements ought to be ſetled on the Chancellor, Maſters, and Scholars of *Magdalen Hall*, in the Univerſity of *Oxford*. Whereupon, Commiſſioners, by vertue of the Statue for *Charitable Uſes*, being of opinion, that the written Will was not revoked, or made void, though concealed, did decree, That the Chancellor, Maſters, and Scholars of the Univerſity of *Oxford* and their Succeſſors, ſhould, for ever, then after ſtand ſeized of the ſaid Lands and Tenements, and ſhould receive the Rents, and pay them over to *Magdalen Hall*, to the Uſes in the Will. And that the Heir ſhould be for ever, excluded and debarred; that Dr. *Hyde* ſhould out of the Money in his hands, lay out 320 l. in the purchaſe of ſo much Land, as would make the Lands, whereof Mr. *Meeke* dyed ſeized, 100 l. *per ann.* and 41 to make up the Arreats of the 100 l. *per ann.* for three years. And that the Lands to be purchaſed, ſhould be ſetled as the other Lands were. And that the Tenants ſhould pay the remaining Rents in their hands, to the Univerſity, for the purpoſes aforeſaid, and ſhould deliver the poſſeſſion of the Lands to the Univerſity; and that Leaſes ſhould be made for 21 years in poſſeſſion; and that the Will ſhould be performed.

Com. Decree.

Exceptions.

To which Decree, *Chriſtopher Meeke* put in Exceptions (1) That the Decree was *Felo de ſe*, for that the Inquiſition found, That he was Heir to *John Meeke*, and that he made a Will, but did not find, that ever any ſuch Will was produced, or was ever ſeen after the death of *John Meeke*, and ſo the Decree was grounded upon the imaginations of Jurors, and fancies of Commiſſioners, without ground, for *Omne Teſtamentum morte conſummatum eſt*, ſo no Will till after his death, and if any, annihilatory and revokeable, *in articulo mortis*, and of no effect, and was not his Will in propriety of Speech, or legal underſtanding till his death. (2) That *John Meeke* made no ſuch Will, but dyed *inteſtate*, and the Lands deſcended to the Exceptant. (3) That no Evidence was given to the Jurors, but Depoſitions taken in the Prerogative Court, which was no Evidence at Law or Equity. (4) That the Jurors did not find that *John Meeke* dyed ſeized in Fee, and ſo nothing could paſs by the pretended Will. (5) That the Decree was grounded upon a void and inſignificant Inquiſition. (6) That the Commiſſioners have determined a Right, and ſet up an Eſtate in a Corporation, no way at all concerned, mentioned, or intended by *John Meeke* in the pretended Will, *viz.* The Chancelor, *&c.* and they to ſtand ſeized to the uſe of a Hall, being no Corporation, or body Politique, capable in Law or Equity, to

receive

receive the Lands, without any reſpect of any Right, or Founderſhip, or Viſitation, which at leaſt, ought to have been reſerved and ſaved to the Exceptant, as Heir at Law, and others of his Bloud ought to have been preferred in the Elections, and the Commiſſioners had for ever barr'd his Heirs of all demand, in caſe of breach of Truſt in the Univerſity. (7) They ought not to have decreed the 320 l. to purchaſe Lands, *&c.*

To which the Reſpondents anſwer (1) That the Inquiſition and Decree were well warranted by the Statute. (2) That in the Inquiſition, ſufficient matter did appear of Truth, Fact and Right, whereby the Commiſſioners might barr the Exceptant, although the Will was not produced, nor proved, to be ſeen after his death. (3) That it was proved to the Jurors, that *John Meeke* made ſuch a Will in Writing, as in the Inquiſition is mentioned; and that *John Meeke*, a little before his death, declared, That he had not altered, nor would alter that Will. (4) And that *Jonathan Magwick* did imbezle the Will; and the Exceptant did ſay, That his Uncle did tell him, that he had made his Will, and had given his Land to *Magdalen Hall*, for the maintainance of poor Scholars, and had promiſed to ſettle the Lands accordingly; and divers other anſwers were given to the Exceptions. And on the 26 of *June*, 21 *Car.* 2. *Regis*, the Matter was heard before the late Lord Keeper *Bridgeman*, and his Lordſhip having heard the Exceptions and Anſwers, and what was alleadged on either ſide, his Lordſhip being fully ſatisfied, that there was ſuch a Will made by the Teſtator, and the Decree made thereon, ſaw no cauſe to reverſe the Decree, and therefore confirmed the ſame.

Answer.

Decree confirmed.

Hill. 12. *Car.* 1.

Blackſton *and the Hoſpital of* Hemſworth.

The Caſe.

Robert Holgate, late Archbiſhop of *York*, by his Will, dated 27 *Aprilis* 1555. did Deviſe to Sir *William Peters*, &c. whom he made Executor of his Will, and their Heirs, divers Houſes and Lands in *Yorkſhire*, to the intent to erect an Hoſpital in *Hemſworth*, for one Maſter, and 20 Brethren and Siſters, to continue for ever. And directed an allowance to each of them, being about the then value of the Lands; and authorized his Executors to ſell his Goods, and divers of his Lands; and that the Executors ſhould keep no Goods or Profits, beſides (their charges) in their hands, but beſtow the ſame to the Glory of God, and the health of his Soul. The ſurviving Executors proved the Will, and became ſeized, and 17 *Martii* 3 and 4. *P* and *M.* Renting a Licenſe to erect the ſaid Hoſpital, ordered a common Seal, *&c.* ſetled 100 Marks *per ann.* upon the Maſter and Brethren, the Lands being worth 500 l. *per ann.* The Executor ſold the Lands, reſerving only 100 Marks *per ann.* to the Hoſpital. 11 *Jacobi*, The Vicar and Churchwardens of *Hemſworth*, exhibited a Bill in *Chancery*, againſt ſuch as had the Lands, and upon

Bill in Chancery.

the Hearing, Sir *Edward Philips*, Maſter of the Rolls, increaſed the 100 Marks *per ann.* to 100 l. declaring, that he did not conceive, that the Defendants Fines, with Proclamations, barred the Charity. Afterwards the Maſter, Brethren, and Siſters of the Hoſpital, conceiving the former Bill to be exhibited by practiſe, exhibited their Bill againſt the Poſſeſſors of the Land; and did ſet forth, That the Lands were given to the Hoſpital, and that in breach of Truſt, the Lands had been conveyed away in Fee-Farm, reſerving upon all, but 100 Marks *per ann.* to the Hoſpital.

Anſwer. The Defendants, anſwered, and ſet forth their Titles, and claimed the Lands, ſome by Deſcents, and others by Conveyances and Fines, for valuable Conſiderations.

The Lord *Elſmere*, and the Judges declared, that there had been an apparent breach of Truſt, and that the Hoſpital had been abuſed, by being kept from what by the Donor was meant unto them, *viz.* the Land it ſelf, and not only a dry Rent, being appointed by the Donor, for the good and benefit of the Hoſpital. Neither did his Lordſhip conceive, That the Fines, with Proclamations, ought to be a barr to the ſaid *Charitable Uſe*. And that all the Purchaſors claiming under the Truſt, which was broken, and there being a violent preſumption, that they had notice of the Truſts, as well, for that they that ſold the ſaid Lands, could not make any Title, but by the Will of the ſaid Arch-biſhop; as alſo for that they did all pay Rents to the ſaid Hoſpital, And in 12 *Caroli primi*. This Matter came again in queſtion, before the Lord Keeper *Coventry*, who directed a Commiſſion to be awarded upon the Statute of *Charitable Uſes*. The Commiſſioners made a Decree for the whole Lands, to which, Exceptions were put in by one *Brigg*, who claimed, under a Purchaſe, made by one Mr. *Wymarke*, who pretending the Crown was entituled to the Lands, had attained a Patent thereof from Queen *Elizabeth*, as concealed Lands.

24 *Jun.* 12. *Car.* 1. and 4 *Feb.* 12 *Car.* 1. The Lord Keeper, aſſiſted by Judge *Hutton*, Judge *Jones*, and Judge *Berkley* (no colour of proof being offered, that the ſame were concealed Lands as his Lordſhip but only the Patent it ſelf) His Lordſhip did ſee no cauſe to give allowance to the Patent, to overthrow a *Charitable Uſe*. And his Lordſhip having peruſed the Evidences, confirmed the Decree, as to all but ſome Chantry Lands in the Patent, which were not the Arch-Biſhops. And that the Hoſpital ſhould hold the Lands for ever; but becauſe the Exceptant had laid out much Money in Building, upon the Hoſpital-Lands, he ſhould have a Leaſe for one and twenty years, at one hundred and twenty pound *per ann.* being above fifty pound *per ann.* increaſe, of what had been formerly paid to the Hoſpital, the Lands being above one hundred and fifty pound *per ann.* above the old Rent of ſeventy pound *per annum*, reſerved to the Hoſpital, and ſo would be worth a hundred and thirty pounds to the Leſſees, above the Rent which they

they ſhould pay for it, and a Leaſe was made accordingly.

Afterwards one *Blackſton* put in new Exceptions to the ſaid Decree; to which the Hoſpital pleaded the former proceedings. And in *October* 15 *Car.* 2. the Matter was heard before the Lord Chancellor *Clarenden*, and Mr. Juſtice *Tirrel*, and the Plea allowed.

Exceptions.

Plea allowed.

And 18 *June*, 15 *Car.* 2. it was ordered, That the Exceptant, who had much of the Lands, ſhould accompt for his proportion of the Rent of one hundred and twenty pounds *per ann.* reſerved upon the Leaſe, directed by the Lord *Coventry*, during the Terme, and ſince it expired, till *Whitſuntide* before. It was propoſed, That the Exceptant *Blackſton*, being a great ſufferer for His Majeſty, in the late Wars, might renew his Leaſe upon reaſonable terms, which was referred to the Arch-Biſhop of *York*.

18 *June*, 15 *C.* 2.

Order thereupon.

Propoſed.

The Lord Chancellor having adviſed with the then Lord Chief Juſtice, and Lord Chief Baron, upon the merits of the cauſe, and a Maſter's Report, touching the Arrears, declared, That he did not ſee any cauſe to recede from the former Decree of the Commiſſioners, nor the Lord *Coventrye*'s Confirmation, in 12 *Car. primi.* And that he could not abſolve the Exceptant, from the two hundred and twenty pounds, certified by the Maſter, but decreed the payment thereof, and ratified the Lord Keeper *Coventrye*'s Confirmation. And that the Hoſpital ſhould enjoy the Lands; but a Leaſe ſhould be made to the Exceptant, for the Fine and Rent formerly propoſed by the Arch-Biſhop, with the conſent of the Hoſpital, *&c.*

17 *July*, 16 *C.* 2.

L. Chancellors Decree.

Former Decrees confirmed.

30 *May*, 26 *Car.* 1.

Willoughby *and the Weavers of* Glouceſter.

KIng *Edward* the VI. for a ſum of Money, by his Letters Patents, granted to *T. C.* and *R. P.* certain Chantry Lands, to hold to them and their Heirs, which Lands were, by Inquiſition, found to have been the Lands of the Company of Weavers of *Glouceſter*, and were, by Commiſſioners for the execution of the Statute of *Charitable Uſes*, decreed to them accordingly.

The Caſe

Mrs. *Willoughby* put in Exceptions againſt the ſaid Decree, and therein ſet forth the Letters Patents, and many Meſne Conveyances, for valuable conſiderations, under which ſhe claimed, and in ſpecial, That ſhe was a purchaſor for valuable conſideration of Money lent, and had no notice of any *Charitable Uſe*, and ſo her Intereſt and Title, ought not to be impeached by the ſaid Decree, which Exception was allowed by the Lord Keeper, and the Decree annulled.

Exceptions.

Com. Decree told and Reverſed.

Veneris, 19 Jan. 19 Car. 2. in Canc.

Inter Will. Rooks & Edw. Potter, *ex parte iſtius partis Paroch. Sancti Egidii, extra* Cripplegate, *jacente intra* London, Exceptants, & *Richardum D ton, ex parte iſtius partis ejuſdem Paroch. jacente, in Com. Mida.* Reſpondents.

The Caſe. Criplegate, London.

THe Matter upon the Exceptions, put in by the Exceptants to a Decree made in this Cauſe by the Commiſſioners, upon the Statute of *Charitable Uſes*, coming this preſent day to be heard and debated before the Right Honourable the Lord Keeper of the Great Seal of *England*, in the preſence of the Counſel, Learned, on both ſides. The ſubſtance of the Matter, upon which the ſaid Decree is grounded, being, That one *Mary Chambers*, by her laſt Will in Writing, 7 *June* 1654. did deviſe unto the Churchwardens, and Overſeers for the Poor of the Pariſh of *St. Giles* without *Cripplegate*, *London*, the ſum of 100l. to be paid to them, for the increaſe of their Pariſh Store, which ſaid 100l. was accordingly paid unto the then Churchwardens of that part of the ſaid Pariſh, lying within *London*, for the uſe of the Poor aforeſaid, and the ſaid Money was by them placed out at intereſt, for the uſe aforeſaid. And that the ſaid Exceptants, being Churchwardens of that part of the ſaid Pariſh, which lyeth within *London*; did, on, or about the firſt of *July*, 15 *Car. nunc Regis*, receive 31. for Intereſt of the ſaid 100l. and diſpoſed thereof to the Poor of that part of the ſaid Pariſh, which is in *London*, no part thereof being paid to the Poor of the other part of the ſaid Pariſh lying in *Middleſex*. Upon which, complaint being made, the Commiſſioners, impowred for that purpoſe, did thereupon Decree, That the ſaid Exceptants ſhould pay unto *Henry Weſt* and *Hugh Shipley*, the Churchwardens of that part of the ſaid Pariſh, which is in *Middleſex*, for the uſe of the poor there, thirty ſhillings, and one ſhilling for damages, and ten pounds to the Reſpondent, or proſecutor for Coſts. The Exceptants have excepted thereunto, for that they being Churchwardens for the Poor of that part of the ſaid Pariſh which is in *London*, they received the ſame, and imployed the ſame, for, and towards relief of the ſaid Pariſh, living in *London*. (2) And the Exceptants are in no fault, they not miſimploying the ſame, but paying it to the Poor as aforeſaid. And the Exceptants Counſel inſiſted. (3) That their Predeceſſors, Churchwardens of that part of the ſaid Pariſh which is in *London*, have done the ſame in Caſes of like nature, and have by the Commiſſioners been indemnified therein. (4) And that the Proſecutor upon a Tryal before the Commiſſioners, touching the Matter in queſtion, hath been Non-ſuited. (5) And upon another Tryal at Law, Verdict paſſed againſt him. (6) That the Money was not miſimployed. And (7) That by the words of the Will, and by the Cuſtom of the Pariſh,

Com. Decret.

Exceptions.

riſh, the Poor in *London* only ought to have the ſaid Moneys. Whereupon, and upon long debate of the Matter, and hearing what was inſiſted upon by the Council on either ſide, His Lordſhip allowed the Exceptants Exceptions, put in to the ſaid Decree, they having paid the Money to the Poor of that part of the ſaid Pariſh in *London*, as aforeſaid; and in purſuance of the Verdict, and Non-ſuit aforeſaid, and not converted the ſame, or any part thereof to their own uſes, or miſimployed the ſame. And his Lordſhip conceived the ſaid Decree, made by the ſaid Commiſſioners aforeſaid, to be erroneous; and therefore doth order and decree the ſame to be reverſed, and ſet aſide. *Decree Reverſed.*

24 *Martii* 1659. *Car.* 2.

Weſtham *in* Eſſex, *and* Beſt.

IT was found by Inquiſition, that *Mary Gwilliams*, widow, did, in her life time, hold to her and her Heirs, of the then Lady of the Mannor of *Weſtham*, by Copy of Court-Roll, according to the Cuſtom of that Mannor, a Meſſuage, *&c.* of the the yearly value of five pounds: And that the ſame were divers years in the life-time of the ſaid *Mary*, held and enjoyed by *Drew Beſt*. And that the ſaid *Mary*, long before her death, did aſſign, limit, and appoint, That 30 s. of the Rent, Iſſues, and Profits of the ſaid Tenements and Premiſſes, ſhould be yearly imployed and reſerved, in, and for the relief of the poor people, for the time preſent, and from time to time, being in *Weſtham* foreter. And that thirty ſhillings *per ann.* was yearly, for divers years together, in the life-time of the ſaid *Mary*, and by her direction and appointment, paid to the Churchwardens of *Weſtham*, for the relief of the poor people there. And that the ſaid *Mary*, to the intent, that the ſaid yearly ſum of thirty ſhillings might be the better ſecured to be paid, to, and for the relief of the Poor of *Weſtham*, aforeſaid. 4 *Auguſti* 1633. did ſurrender the Premiſſes to the uſes in her Will, and after dyed, and did declare her Will, Mind, and Deſire to be, That 30 s of the Rent of the Premiſſes, ſhould yearly, and every year for ever then after, be paid to, and for the relief of the Poor of *Weſtham*, and after dyed. And that *Drew Beſt* having notice of the ſaid Charitable Aſſignment, Limitation, and Appointment, did for ſome years enjoy the Premiſſes, and pay the thirty ſhillings *per ann.* to the Churchwardens (2) That from the death of *Mary*, *Beſt* and his wife enjoyed the Premiſſes, by vertue, as they pretended, of a Surrender, made by *R. G.* Son and Heir of *Mary*, and had held the ſame eight years, and detained the 30 s. from the *Charitable Uſe*, and that 12 l. was arrear. *Notice.*

Whereupon Commiſſioners Decree, That *R. B.* ſhould pay the Pariſhioners 12 l. for the Arrears and 10 l. more for Damages for deteining the Money, and for the Coſts and Charges of the Pariſhioners of *Weſtham* expended in that Commiſſion and Decree

cree. And that *R. B.* Owners and Proprietors of the Premiſſes, ſhould yearly for ever, pay the 30 s. *per ann.* accordingly.

Rebeca Beſt excepted againſt this Decree. But in *Caroli* 2. the Decree was confirmed by the then Lord Chancellor.

5 Car. 1.
Matſall *in* Suſſ.

Suſſex. THe Lord Keeper heard and determined the Matter, upon the Exceptions only.

Appleton *in Com.* Berks.

Berks. THe Lord Keeper heard the Matter upon Exceptions only.

Martlyn *in Com.* Wigorn.

Wigorn. THe Lord Keeper heard the Matter upon Exceptions and Anſwer.

DECREES.

DECREES.

Southamp. ſſ. *At* S. *in the County of* S. *the* 10 *day of* D. *in the* 14 *year of the Reign of our Sovereign Lord* Charles *the* II. *by the Grace of God, King of* England, Scotland, France *and* Ireland, *Defender of the Faith, &c. Anno Dom.* 1662.

WHereas by an Inquiſition, taken at *B.* in the ſaid County of *S.* the 21 day of *November* laſt paſt, before *G. F. P. R. W. R. F. W.* Eſquires, by vertue of a Commiſſion, under the Great Seal, bearing date the third day of *N.* laſt paſt, to them and others, or to any four or more of them, directed for the due execution of the Statute, made in the 43 year of the late Queen *Elizabeth*, Entituled, *An Act to redreſs the miſ-imployment of Lands, Goods, and Stocks of Money, heretofore given to Charitable Uſes*, by the Oaths of *L. H. B. F. R. C. A. R. B. F. A. T. W. H. W. T. F. T. L. G. B. W. B. H. W. L. C. N. L. W.* and *T. W.* good and lawful Men of the ſaid County of *S.* It is found that *F. F.* late of *B.* in the Pariſh of *S.* in the County of *H.* Widow, deceaſed, was in her life-time ſeiſed (amongſt other things) in Fee of, and in a certain portion of Tithes in *B.* in the ſaid County of *S.* in *&c.* And that the ſaid *F.* being ſo thereof ſeized, did make her laſt Will and Teſtament in Writing, bearing date the 22 day of *A.* in the year of our Lord God, 1567. And did thereby give, deviſe, and bequeath unto *N. F.* late of *&c. J. N. S. R. L. F.* and *A. F.* then Inhabitants of the Town of *N.* in the County of *C.* and to their Heirs and Aſſigns for ever. The ſaid portion of Tythes, amongſt other things, by the name of all that the Tithes of *B.* within the County of *S.* with all Profits and Commodities, being part or parcel thereof, or unto the ſame belonging or appertaining, or with the ſame, Letten or Occupied, then being in Leaſe for divers years then to come; Whereupon the Rent of *&c.* by the year, was reſerved, and ſhould be paid, during the ſaid term, unto the ſaid Deviſees, their Heirs and Aſſigns, to the uſes and intents in the ſaid Will mentioned, That is to ſay, That they the ſaid *F. F. J. R.* and *F.* their Heirs and Aſſigns, ſhould yearly and for ever, imploy and beſtow the yearly Rents, Iſſues, and Profits ariſing, coming, and growing by the ſame Tithes, and the Houſes in the ſaid Will mentioned, which then amounted to *&c. per ann.* to the erection, maintainance, and finding of a free Grammar-School within the ſaid Town of *N.* for ſuch a competent number of Scholars as ſhould be thought good to thoſe her Deviſees in Truſt, or unto *D. L.* then Maſter of *C.* Colledge in the Univerſity of *Oxon*, and by them ſhould be ſet down in Writing, under their Hands and Seals, the ſaid number of Scholars, to be of the Children of the Inhabitants of the ſaid Town of *N.* And, whereas it appears by the ſaid Inquiſition, That the ſaid portion of Tythes in *B.* aforeſaid, and the Houſes and Premiſſes in the ſaid Inquiſition mentioned, were all of them given, appointed, and intended by the ſaid *F. J.* to,

and

and for the *Charitable Uſes* afore-mentioned, and for that it hath appeared unto the ſaid Commiſſioners, by the ſaid Inquiſition aforeſaid, that the ſame Tythes now are, and, for the ſpace of many years laſt paſt, have been of a very great yearly value, more than the Rent reſerved by the Feoffees of the ſaid School, upon the Leaſes thereof, over and above all Taxes, Charges, and Repriſes.

Now, we the ſaid *G. J. P. R. W. R. F.* and *L. S.* having called the parties intereſſed in the ſaid Tythes, and having heard and examined the Matters and Things, in and by the ſaid Inquiſition found, and thereby appearing, and being ſatisfied, that according to the true intention of the ſaid *F. F.* all the Rents and Profits of the ſaid Tythes, without fraud or diminution, ſhould be paid and diſpoſed to the ſaid *Charitable Uſes*; and that the ſaid Tythes ought to have been Leaſed, at, or very near to their true yearly value, do, by vertue of the ſaid Statute and Commiſſion, and the Power and Authority thereby to us given, Order, Judge, and Decree, That the ſaid Concurrent Leaſe, or Leaſe in Reverſion, bearing date on or about the 10 day of *A.* in the 20 of the ſaid late King *Charles*, made by the ſaid *P. W. R. H. N. M.* and *S. F.* of the ſaid portion of Tythes, to the ſaid *N. E.* his Executors, Adminiſtrators and Aſſigns, for the term of *&c.* aforementioned, at the Rent of, *&c. per ann.* was alſo made and granted, contrary to the intent of the ſaid *F. F.* and was a miſ-government of the ſame Tythes, and defrauding of the ſaid *Charitable Uſes* within the ſaid Statute. Therefore we the ſaid *G. J. P. R. W. R.* and *J. W.* for reformation of the ſaid abuſes and breaches of Truſt, and to the end, that the ſaid Rents, Iſſues, and Profits of the ſaid Tythes, may be duly and faithfully imployed to, and for the *Charitable Uſes* aforeſaid, for which they were given, limited aſſigned, and appointed by the ſaid *F. F.* do further Order, Adjudge, and Decree, That the ſame Leaſe and Term ſo made of the ſame Tythes to the ſaid *N. E.* as is aforeſaid, and all other mean Aſſignments of the ſame Leaſe are, and either of them is, and from henceforth ſhall be utterly void, and of none effect. And that the ſaid *L. R.* his Executors, Adminiſtrators and Aſſigns, ſhall within one month after notice of this Decree, deliver the ſaid Leaſe and Aſſignment thereof to the Feoffees, which now, or hereafter ſhall be of the ſaid Tythes, ſhall, and may Grant and Lett the ſame Tythes at the true yearly value thereof, The ſame Leaſe thereof made to the ſaid *N. E.* as is aforeſaid, or the Aſſignment thereof notwithſtanding. And we the ſaid Commiſſioners do further Order, Adjudge and Decree, That the ſaid *L. R.* his Executors and Adminiſtrators, ſhall within one month, next after notice of this Decree, pay unto ſuch perſons as now are, or then ſhall be the Feoffees in Truſt of the ſaid Tythes, the ſum of, *&c.* of the Rents and Profits of the ſaid Tythes by him received, from the Feaſt of *St. Michael* the Arch-Angel, in the ſaid Year, 1660. until the 30 day of *S.* 1662. over and above the Rent paid to the ſaid School, and all other Taxes, Charges, and Repriſes. And that the ſame, according to ſuch proportions as in the Will of the ſaid *F. F.* are expreſſed, ſhall be diſpoſed of, and diſtributed to ſuch Perſons, Intents and Purpoſes, to whom it ought to have been paid, if the true yearly value of the ſaid proportion of Tythes, for the time aforeſaid, had been duly received. And that the growing Rents,

Iſſues,

Iſſues and Profits of the ſame Tythes, ſhall be for ever hereafter received by the Feoffees of the ſame Tythes, their Heirs and Aſſigns, and ſhall be by them laid out and diſpoſed of, in manner and form following. That is to ſay, That *&c.* thereof, ſhall be paid *B. R. &c.* The proſecutor of the ſaid Inquiſition and this Decree, for the Moneys laid out, in and about the ſuing out of the ſaid Commiſſion, and the proſecuting of the ſaid Inquiſition and this Decree. And moreover, That all the Rents, Iſſues, and Profits of the Premiſſes hereafter to be received by the Feoffees of the ſame portion of Tythes, their Heirs and Aſſigns, except the ſame ſum of *&c.* ſhall be for ever hereafter diſpoſed, paid, and imployed to the School-Men and Uſher, when there ſhould be one appointed of the ſaid School, and to the Maſter of the Colledge in *O.* for the time being, and in the reparations of the ſaid School-houſe, according to the proportions of the ſeveral ſums of Money, by the Will of the ſaid *F. F.* limited and appointed to the ſeveral perſons and purpoſes in her ſaid Will mentioned and intended. And in caſe the ſaid now Feoffees of the Premiſſes, ſhall refuſe to perform this Decree on their parts, or ſhall be negligent in the performance thereof, Then, and in ſuch caſe, We the ſaid Commiſſioners, do Order, Adjudge, and Decree, That the ſaid now Feoffees of the Premiſſes, and the Survivors of them, ſhall, upon demand, make a new Feoffment, or ſuch other Conveyances, as by Counſel Learned ſhall be adviſed of all the ſaid portion of Tythes in *B.* aforeſaid, whereof they ſtand ſeized to the *Charitable Uſes* aforeſaid, unto *N. T. D. G. C. T. M. B. M. E. S. W.* and *D. J.* being honeſt and ſubſtantial Inhabitants of the ſaid Town of *N.* aforeſaid, and to their Heirs and Aſſigns for ever, to the uſe of them, and their Heirs and Aſſigns in Truſt, to, and for the Uſes, Intents and Purpoſes in the ſaid Will of the ſaid *F. F.* mentioned and expreſſed. And that the ſaid new Feoffees, after the time they ſhall be lawfully eſtated and inveſted in the Premiſſes, ſhall perform this preſent Order, Judgement, and Decree, according to the true intent and meaning thereof. And the ſaid Commiſſioners do further Order, Adjudge, and Decree, That in every Leaſe hereafter to be made of the ſaid Tythes and Premiſſes in *B.* in the County of *S.* aforeſaid, or any of them, by the Feoffees of the Premiſſes for the time being, there ſhall be reſerved the true yearly value thereof. And that the ſame ſhall be thereby made payable to the Feoffees (ſo making the ſaid Leaſe) their Heirs and Aſſigns, to, and for the *Charitable Uſes* in the Will of the ſaid *F. F.* mentioned and expreſſed, and ſhall be made by the ſaid Feoffees, as Feoffees in Truſt of the ſaid *F. J.* for the *Charitable Uſes* aforeſaid, and ſo to be expreſſed in the ſaid Leaſes: and that no Leaſes hereafter to be made of the Premiſſes, or of any part thereof, ſhall be made but in poſſeſſion, and not to exceed the number of 21 years, from the making thereof. *In witneſs, &c.*

DECREES.

Lincoln. AT B. *in* L. *the* 10*th day of* N. *in the* 14*th year of the Reign of our Sovereign Lord* Charles *the* II. *by the Grace of God, King of* England, Scotland, France *and* Ireland, *Defender of the Faith*, &c. *Anno Dom.* 1662.

WHereas by an Inquiſition indented, taken at *B.* aforeſaid, the 2 day of *Octob.* laſt paſt, before *W. B. C. D. E. F.* and *G. H.* Eſquires, by vertue of a Commiſſion under the Great Seal of *England*, bearing date the 11 day of *M.* in the ſaid 14th year of his ſaid Majeſties Reign, to them and others directed, for the due execution of the Statute made, in the 43 year of the Reign of the late Queen *Elizabeth*, Entituled, *An Act to redreſs the miſ-imployment of Lands, Goods, and Stocks of Money heretofore given to* Charitable Uſes, by the Oaths of, *A. B. C. D. &c.* good and lawful Men of the ſaid *B.* It was found, *&c.* As in, and by the ſaid Inquiſition hereunto annexed, it doth and may appear. And whereas the ſaid *B. G.* by his laſt Will and Teſtament in Writing, bearing date the 22 day of *February*, in the year of our Lord, 166c. did demiſe unto his Wife *B. S.* all his Leaſe, Eſtate, and Term of years and Intereſt, which he had of, and in the ſaid Meſſuages and Tenements, ſcituate in *L.* which he held by force of ſeveral Leaſes, granted by the Feoffees of the Grammar-School of *P.* in *L.* as by a Copy of the ſaid Will proved before us the Commiſſioners afore-named, it doth and may appear. And foraſmuch as we are fully ſatisfied by the ſaid Will of the ſaid *B. G.* and by other proofs made before us, that the ſaid *B. G.* at the time of the taking of the ſaid Leaſe of 40 years, had notice of the *Charitable Uſes* aforeſaid. Now we *B. W. B. L. B. M. M. R. B. P. N. P. C. R.* being Commiſſioners, and perſons nominated and authorized in, and by the ſaid Commiſſion, having firſt called the preſent Feoffees of the Lands, Tenements, and Hereditaments aforeſaid, and the ſaid *B. S.* and *B. F.* in the ſaid Inquiſition named before us, and Oath being made, that they were ſerved to appear before us, and having heard *S.* and *F*, and their Council, and having examined and conſidered of the Matters and things, in, and by the ſaid Inquiſition found, and the Will of the ſaid *B. G.* and being fully ſatisfied, that all the Rents and Profits of the ſame Premiſſes, are to be paid and diſpoſed to the ſaid *Charitable Uſes* afore-mentioned. And that the Houſes afore-mentioned, ought to have been Leaſed at the true yearly values thereof; are of opinion, and do adjudge and decree, That the afore-named Feoffees and Truſtees of the Lands, Tenements, and Hereditaments, given, limited, and appointed by the ſaid *F. J.* to the *Charitable Uſes* aforeſaid, who made the ſeveral Leaſes in the Inquiſition mentioned, have abuſed, and broken their Truſt, concerning the ſaid Houſes in *L.* aforeſaid, and have imployed the ſaid Houſes in *L.* aforeſaid, by granting the ſaid ſeveral long Leaſes thereof, at much leſſer values, then the ſame Houſes were reaſonably worth, to be Lett at the reſpective times of the making of the ſaid reſpective Leaſes there-

thereof. And that the ſaid Leaſes and Occupiers of the ſaid Houſes, have miſ-imployed the ſame Houſes for the times which they have held and enjoyed the ſame, and received the Rents and Profits thereof, not paying the yearly values thereof to the Charitable Uſes aforeſaid: Therefore, we the ſaid Commiſſioners, to wit, the ſaid *B. W. B. G. M. B. M. R. B. P.* and *H. N.* do Order, Adjudge, and Decree, that the ſaid ſeveral Leaſes, to wit, the ſaid Leaſes made to the ſaid *B. G.* for 40 years in poſſeſſion, as is aforeſaid, the ſaid Leaſe ſo made to the ſaid *R. L.* for 40 years in poſſeſſion as is aforeſaid, and the ſaid Leaſe ſo made to the ſaid *W. F.* in Reverſion as is aforeſaid, and every of them are, and from henceforth ſhall be utterly fruſtrate, and void, to all intents and purpoſes, as if the ſame had never been made or granted. But foraſmuch as it appeareth by the ſaid Inquiſition, That *B. G.* did heretofore lay out 150 l. upon the new biulding of the Houſe and Premiſſes ſo to him Demiſed, as is aforeſaid, and thereby advanced the yearly value thereof: and for that it alſo appeareth by the ſaid Inquiſition, That *B. G.* did heretofore lay out 150 l. upon the new building of the Houſe and Premiſſes ſo to him demiſed, as is aforeſaid, and thereby advanced the yearly value thereof: And for that it alſo appeareth by the ſaid Inquiſition, that the ſaid Meſſuage and Premiſſes ſo demiſed to the ſaid *B. G.* as is aforeſaid, was worth 20 l. *per ann.* at the time of the making of the ſaid Leaſe, above all Charges and Repriſes: And by the teſtimony of Witneſſes ſworn before, it was proved, that the ſame were of greater value; and there being no Covenant or Agreement in the ſaid Leaſe, for the new building of the ſaid Houſe; And for that it is now about 20 years, ſithence the ſaid Houſes were new built, and the ſame having been worth, ever ſithence the building thereof, above 28 *l. per ann.* above the ſaid Rent of 14 l. reſerved by the ſaid Leaſe thereof; We the ſaid Commiſſioners are of opinion, That the ſaid *B. G.* hath, by the ſaid overplus Rents, been re-imburſed the ſaid ſum of 150 l. ſo by him laid out in the ſaid building, with an overplus: And therefore we the ſaid Commiſſioners do further Order and Decree, That the overplus Rents of the ſaid Houſes already received, ſhall be allowed for the Moneys laid out by the ſaid *B. G.* in the building thereof. And moreover, that the now Feoffees of the ſaid Premiſſes, or the ſurvivor of them, ſhall make, ſeal, and execute a new Leaſe of the ſaid new-built Houſes to the ſaid *B. S.* her Executors and Aſſigns, for ſo many years of the ſaid term of 40 years ſo granted to the ſaid *B. G.* as aforeſaid, as by effluxion of time are not yet expired, at the true yearly value thereof. And that the Rent to be reſerved in, and by the ſaid Leaſe, ſhall be made payable to the ſaid Feoffees, their Heirs and Aſſigns, to, and for the Charitable Uſes in the Will of the ſaid *F. F.* mentioned, expreſſed, and declared; and to be paid at ſuch days and times, as the Rent reſerved by the former Leaſe thereof are limited and appointed to be paid, and with ſuch Proviſoes, Covenants, and Agreemetts, as in the ſaid former Leaſe are compriſed and ſpecified. Provided always, and the ſaid Commiſſioners do further order and decree, That if the ſaid *B. S.* ſhall not come in and ſubmit her ſelf to this preſent Order and Decree, and ſurrender up the ſaid old Leaſe of 40 years, by this Decree, fruſtrated and declared void, and deſire to have the preferment to take ſuch new Leaſe within one moneth next

after, ſhe ſhall be ſerved with a Writ of Execution of this Decree, That then the ſaid *B. S.* and all claiming under her, or under the ſaid *B. G.* ſhall quit, and yield up the poſſeſſion of the Premiſſes aforeſaid, to the Feoffees of the ſame Premiſſes. And that then the ſaid Feoffees ſhall grant a Leaſe of the ſame Houſes, to ſuch perſon or perſons as they ſhall think fit, in ſuch manner, as is herein after mentioned. And we the ſaid Commiſſioners do further order and decree, the now Feoffees of the ſaid Houſes and Premiſſes, or the Survivors of them, ſhall alſo make, ſeal, and execute a new Leaſe of the ſaid Houſe and Premiſſes, heretofore granted to the ſaid *L. R.* as aforeſaid, to the ſaid *B. F.* his Executors and Aſſigns, for ſo many years of the ſaid term of 40 years to the ſaid *L. R.* heretofore granted as aforeſaid, as by effluxion of time are not yet expired, at the true yearly value thereof; the ſame before us to be worth 24 *l. per ann.* to be Lett, or thereabouts: And that the Rent to be reſerved in, and by the ſaid Leaſe, ſhall be made payable to the ſaid Feoffees, their Heirs and Aſſigns, to, and for the Charitable Uſes in the Will of the ſaid *F. F.* mentioned, expreſſed and declared, and at ſuch days and times as the Rent reſerved by the former Leaſe thereof, are limited and appointed, and with Proviſo's, Covenants, and Agreements, as in the ſaid former Leaſe are comprized and ſpecified. Provided always, and the ſaid Commiſſioners do further Order and Decree, That if the ſaid *B. F.* ſhall not come in and ſubmit himſelf to this preſent Order and Decree, and ſurrender up the ſaid old Leaſe ſo made to the ſaid *L. R.* for 40 years, and by this Decree, fruſtrated and declared void, and deſire to have the preferment to take ſuch new Leaſe within one month next after, ſhe ſhall be ſerved with a Writ of Execution of this Decree; That then the ſaid *B. F.* and all claiming under him, or under the ſaid *L. R.* ſhall quit, deliver, and yield up the poſſeſſion of the Premiſſes ſo aſſigned unto him the ſaid *L. R.* as is aforeſaid, to the Feoffees of the ſame Premiſſes: And that then the ſaid Feoffees ſhall grant a Leaſe of the ſame Houſes, in ſuch manner as is herein after mentioned. And in caſe the ſaid now Feoffees of the Premiſſes, ſhall refuſe to perform the Decree on their parts, or ſhall be negligent in the performance thereof; then, and in ſuch caſe, We the ſaid Commiſſioners do order, adjudge, and decree, That the ſaid now Feoffees of the Premiſſes, and the Survivors of them, ſhall, upon demand, make a new Feoffment, or ſuch other Conveyance, as by Councel Learned ſhall be adviſed, of all the ſaid Meſſuages and Premiſſes in *L.* aforeſaid, whereof they ſtand ſeized to the Charitable Uſes aforeſaid, unto *A. B. C. D. E.* &c. being honeſt and ſubſtantial Inhabitants of the ſaid Town of *P.* aforeſaid, and to their Heirs and Aſſigns fore ever, to the uſe of them and their Heirs and Aſſigns in Truſt, to, and for the Uſes, Intents and Purpoſes in the ſaid Will of the ſaid *F. F.* for that purpoſe mentioned and expreſſed: And that the ſaid new Feoffees after the time, they ſhall be lawfully ſtated and inveſted in the Premiſſes, ſhall perform this preſent Order, Judgement, and Decree, according to the true intent and meaning thereof. And the ſaid Commiſſioners do further order, adjudge, and decree, That in every Leaſe hereafter to be made of the ſaid Houſes, and Premiſſes in *L.* aforeſaid, or any of them, by the Feoffees of the Premiſſes for the time being, there ſhall be reſerved the true yearly value thereof, and that the ſame ſhall be thereby made payable to the

the Feoffees (ſo making the ſaid Leaſe) their Heirs and Aſſigns, to, and for the Charitable Uſes in the Will of the ſaid *F. J.* mentioned and expreſſed in the ſaid Leaſes: And that no Leaſe hereafter to be made of the Premiſſes or any part thereof, ſhall be made, but in poſſeſſion, and not to exceed 21 years from the making thereof. And we the ſaid Commiſſioners do further Adjudge, and Decree, That the Rents, Iſſues, and Profits of the ſaid Houſes and Premiſſes, ſhall from henceforth be imployed in manner and form following; That is to ſay, Firſt, That the Proſecutor or Proſecutors of the ſaid Inquiſition and this Decree, ſhall be ſatisfied and paid, out of the increaſe of the Rents, Iſſues, and Profits of the ſaid Houſes the ſum of 30 l. for the Moneys by him or them diſburſed in, and about the proſecution of the ſaid Inquiſition, and this Decree. And moreover, That the Rents, Iſſues, and Profits of the ſame Premiſſes (except the ſaid 30 l.) ſhall be for ever hereafter, received by the Feoffees of the ſame Premiſſes, their Heirs and Aſſigns, and ſhall be ſaid out and diſpoſed of, to the *S.* and *V.* of the ſaid *S.* and to the Maſter of *C.* Colledge in *O.* for the time being, and in the repairs of the ſaid *S.* according to the proportions of the ſeveral ſums of Money by the ſaid Will of the ſaid *F. J.* limited and appointed to the ſeveral perſons and purpoſes in the ſaid Will, limited and intended reſpectively, *in witneſs*, &c.

CERTAIN

Certain Cases adjudged upon Appeals, for the Illustration and Continuation of all that is said in the whole Work.

CHAP. VI.

Case 1 Mich. 1626. *Windsor* and *Hilton*.

No Bill of Review after Lord Chancellor concerning the Commissioners Decree.

THomas Windsore Plaintiff, and Robert Hilton, and the Inhabitants of Farnham Defendents, upon a Reference out of the Chancery to Sir Randolph Crew, Chief Justice of the Kings Bench, Sir John Waller Chief Baron, Sir William Jones, and Sir George Croke, Justices of the said Kings Bench; Whether a Decree made by Commissioners, upon the Statute of 43 Eliz. for Charitable Uses, and Exceptions put in against it in Chancery, and there examined, heard, and confirmed in part, and altered in part, may now be Re-examined upon Bill of Review, as other Bills of Review upon Decrees in Chancery? It was resolved by all those Judges, that the Bill of Review is not to be allowable, but the Decree in Chancery is conclusive, and not to be farther Examined, because it takes its Authority by the Act of Parliament, which mentions but one Examination; and it is not as where a Decree is made by the Chancelor by his ordinary Authority. And the Appeal is in the nature of a Bill of Review, and no Bill of Review doth lye after a Bill of Review, for that would be infinite vexation. And Justice Jones affirmed, that so it was upon a Decree made upon the Statute of 37 Hen. 8. by the Major part, and confirmed by the Chancelor, which is not Re-examinable. But in such a Case, the Party grieved, may petition the King in Parliament, and have his complaint examined, and so the Decree may be Confirmed, Altered, or Annulled, which is to be final. And so it was Resolved by the Judges and Kings Council Assistants in the House of Peers, 20 Caroli 1. 1643. between the Poor of Eastham, in Essex, Plaintiffs of the Lady Kemp, and others Defendents, where one of the Almsmen at Eastham complained by Petition before the Lords in the House of Peers (the King being then with his Army at Oxford) to have a Decree made by the Lord Keeper Coventry annulled, who had altered the Commissioners Decree. And the Defendents excepted that the said Decree could not be admitted without a Bill in Parliament; But upon Reference to the said Judges and Council, they certified as aforesaid, and then the Lords proceeded to examine the Lord Coventries Decree, and confirmed it, Crook 3 Part fol. 40.

Relief from King and Lords in Parliament.

Case 2. Mich. 44. Eliz.

The Case is in Baron *Wilds* Mss. *fol.* 274.

EGerton, Popham, Anderson and Cook, Attorney-General, resolved these questions upon the said Statute:

1 That

1. That the Bishop of the Dioces, if there be any, at the time of the sealing of the Commission, ought, by the express words of the said Statute, to be named a Commissioner, or otherwise the Commission is void: but if he be named a Commissioner, it is not requisite that he should be present at the execution of it, for that none is of the Quorum; but any four or more of the Commissioners named, may execute the same without the presence of the Bishop or his Chancellor. If the See of the Bishop be void at the sealing of the Commission, then the Bishop need not to be named a Commissioner, neither his Chancellor, and the Metropolitan shall not be named instead of the Bishop, for that he is not Bishop of the Dioces. And if the Bishop be named a Commissioner, and dye before the Certificate returned, this doth not avoid the Commission, but the other Commissioners may proceed. Who must be Commissioners. Bishop.

2. If a Lease or Conveyance be made by parties trusted with a Charitable Use, whereby the same is defrauded, the Commissioners may Decree the same Lease and Conveyance to be void. And upon such Decree, the same is void in Interest and Estate. And if afterwards upon an Appeal, the Lord Keeper adnull the Commissioners Decree, or decree the Lease or Conveyance to be good, it is then revived and made good again in Interest and Estate. And if such Lease or Conveyance be assigned over to any, the Commissioners may decree the Assignment to be void, although the first Conveyance was made fraudulently, and in deceipt of the Charirable Use. Power of the Commissioners. To avoid an Estate.

3. If Houses given to Charitable Uses be suffered to be ruinous and out of repair by negligence, the Commissionrs may decree, That those which receive the Rents and Profits of them, shall repair the same, although they have otherwise expended the Rents in performance of the Charitable Use, and may order the Houses to be ever after kept in good repair, as often as need requires. And if they which ought to repair the said Houses be dead, before the Commissioners Decree; the Commissioners may order, that their Heirs, Executors, or Administrators, having Assetts in Law or Equity, shall repair the same. Power of the Commissioners. To order repair of decayd Houses.

4. That the word given in the Statute, extends to Gifts after the Statute, as well as to Gifts before, Statute expound.

5. The Commissioners cannot by their Decree make a Corporation, not before incorporated, and enable them to take to Charitable Uses as a Corporation. As Church-Wardens which are a Corporation in Law, but to special purposes. Power of Commissioners.

But they may decree Lands held in Capite, or in Soccage, to a Corporation already incorporate, to be Trustees, to perform a Charitable Use, and it shall be no Mortmain. To make a Corporation,

Also they may Decree Lands given to Charitable Uses, to sundry persons, and their Heirs, to the said Uses, and enable them to demise the same Lands for the best profit of the said Charitable Use; and that when such a number of them dye, the Power of Commissioners. To enable a Grant.

Sur-

Survivors shall make a Conveyance to settle the said Lands in themselves that survive, and others to make up and continue the number by them appointed.

Power of Commissioners. To order out of their County.

6. If Lands that lye in the body of a County be given to a Corporation, to maintain Charitable Uses, the Commissioners of the County may make Orders to reform the breaches of Trusts, and mis-imployment of such Lands by the Corporation.

Case 3. Trin. 9 *Caroli*, 1. *East-Greensteds* Case.

These Points were resolved by the Lord Coventry.

1. That whereas Robert, Earl of Dorset, had granted a Rent-Charge of 330 l. per ann. out of divers his Manors and Lands in London, and several Counties, for maintainance of an Alms-house in East-greensted, erected by himself. First, That if a Rent be granted out of Lands in several Counties for maintainance of Charitable Uses in one County, the Commissioners in that County, where the Charitable Use is to be performed, may make a Decree to charge the Lands in other Counties, to pay an equal Contribution of charge in payment of the said Rent, and there needs not several Inquisitions in each County, for that the Rent is an entire Grant, by the Deed or Will.

Power of Commissioners. To order out of their County.

Rent not extinguished.

2. If the Devisees of a Rent-charge, or the Grantees thereof to a Charitable Use, do purchase part of the Lands, out of which the Rent is issuing, or all the Land: although in extremity of Law, the Rent-charge is extinguished, yet if the Commissioners decree the Rent to be revived, and settle it upon others to maintain the Charitable Use, the Rent is revived by the said Decree.

Charitable Use goes with the Land.

3. If a Rent-charge be granted out of Land to a Charitable Use, and the Land is afterwards sold for valuable consideration of Money or Land, to one that had no notice of the Rent, yet the Rent remaineth. For that the purchase was of another thing, that was not given to the Charitable Use.

Notice to be given to parties interessed, of the Commission to be executed.

Decree good without it.

4. By the Statute, the parties interessed are to have notice from the Commissioners, of the time and place of their sitting to execute the Commission. Yet if the Commissioners make a Decree, without giving such notice to the parties interessed, it is good. And if the parties upon their Appeal do take exception, that they had not any notice of the time of the executing of the Commission from the Commissioners, that shall not avoid the Decree, unless they shew withal, in their exception, that for lack of such notice, they lost the benefit of such an Exception, to the Commissioners or some of them, or of such a challenge to a Juror, expressing the cause in certain: and if the Lord Keeper adjudge the Cause shewn, to be a sufficient Exception and Challenge, the Decree, or Orders of the Commissioners shall be annulled and reversed without fur-

out further examination, for the intent of such notice to be given, is, That the parties interested, may make their lawful challenges to the Commissioners or Jurors, as the Statute alloweth them.

5. Resolved, That the notice which a Purchasor of Lands given to Charitable Uses ought to have; ought to be certain, and a general notice is not sufficient. As if Land given to Charitable Uses, be intended to be sold by Act of Parliament: And when the Bill is read in the House of Parliament, it is there spoken unto and declared, that the Land is chargeable with a Charitable Use, and recompense is offered otherwise to assure the Charitable Use than by that Land, and afterwards the Bill doth not pass, and the Land is sold to one of the Members of the House that spake unto the Bill for Money, Yet this notice in Parliament, is not sufficient notice, within the intent of the Statute, because it was not known to such a Purchasor, but as a Parliament-man in another capacity. Notice to a Purchasor of the Land of the Use. How to be given.

6. If a purchasor of Land given to Charitable Uses, for consideration of Money, hath legal notice of the Use, and afterwards selleth the Land to another for Money, who hath no notice of the Use; This second purchasor shall hold the Land chargeable with the Charitable Use, for that the first purchasor held it so, and the second purchasor coming under his Title, must hold it subject to the Charges the first purchasor held it, for that he claims under him; But if the first purchasor had no notice of the Use, then is the Land discharged of the Charitable Use: and if he afterwards sell it to another for Money, that hath notice of the Use, yet he shall not hold it subject to the Charitable Use, for that the Land was discharged thereof upon the first Purchase. Purchasors notice. This Use will go with the Land.

7. That if a Rent-charge be granted to a Charitable Use, out of Lands in several Counties, the Commissioners are to charge this Rent by their Decree, upon all the Lands in every County, according to an equal distribution, having regard to the yearly value of all the Lands chargeable with the Rent, and cannot by their Decree charge one or two Mannors with all the Rent, and discharge the residue in other Counties or places, for that their Decree will then be contrary to the Will of Founders or Donors. How a Rent out of Land is to be laid. Power of the Commissioners.

Case 4. 16 Martii, 4 *Caroli*.

BEtween the Poor of Walthamstow in Essex, and upon a Devise of Money by one Colby, to relieve the Poor there: these Points were resolved: First, S. took exception upon his Appeal in Chancery, That he had no notice of the time and place of the execution of the Commission from the Commissioners, whereby he lost the benefit of his challenge to some of the Jurors that were Inhabitants in Walthamstow, as being parties Notice to parties interested of the Commission.